

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-7012

B
P/S

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WILLIAM McQUILLAN,

Plaintiff-Appellant,

-against-

"ITALIA" SOCIETA PER AZIONE DI
NAVIGAZIONE,

Defendant-Appellee.

DOCKET NO.

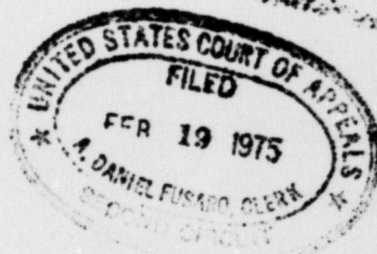
75-7012

APPENDIX TO BRIEF OF
PLAINTIFF-APPELLANT

HAROLD I. GOLD,

Attorney for William McQuillan,
Plaintiff-Appellant,

Office and P.O. Address,
No. 10 East 198th Street,
Bronx, N.Y., 10468,
(212)-367-4441



PAGINATION AS IN ORIGINAL COPY

APPENDIX

TABLE OF CONTENTS

<u>Document No. in Record</u>	<u>Document</u>	<u>Appendix Page No.</u>
A & B	Docket entries 74 Civil 2300, USDC/SDNY	2
7	Affidavit Bruno A, Forel used on motion for summary judgment	4
7	Specimen passage booklet & ticket, Exhibit "A" defendant's motion for summary judgment	7
7	Summons, Exhibit "B" defendant's motion for summary judgment	11
7	Paragraph No.5, Exhibit "D", Defendant's motion for summary judgment	12
7	Letter of March 6, 1973, Exhibit "E"	13
7	Letter May 3, 1973, Defendant's Exhibit "F"	14
7	Defendant's statement under Rule 9 (g)	15
13	Affidavit of McQuillan, 9/23/74 in opposition	17
14	Affidavit of Harrys Harris, 11/5/74 in opposition	20
15	Affidavit of McQuillan, 11/7/74 in opposition	21
13	Plaintiff's exhibits used in opposition to the motion for summary judgment:	
	"E-2" photocopy of McQuillan's ticket	22
	"F" photocopy of 'Silvestri' ticket	23
	"G" photocopy of 'Siegelman' ticket	25
	"H-I" photocopy of 'Geller' ticket	26
	"P-1,2) photocopy of 'Lipton' ticket	28
17	Opinion No. 41453, Hon. Henry F. Werker, D.J. 11/18/1974, granting motion for summary judgment	32
18	Judgment and order dismissing complaint, 11/21/74	47

Document No.
in Record

Document

Appendix
Page No.

19	Plaintiff McQuillan's notice of appeal from memorandum and order granting summary judgment and judgment docketed 11/21/74	48
20	'Owens' ticket, Exhibit "D" used in support of motion for re-argument	49
20	Memorandum and order, Hon. Henry F. Werker, 12/18/74, denying motion for re-argument	51
23	Plaintiff McQuillan's amended notice of appeal 12/26/74, from order denying motion for re-argument and original memorandum, order and judgment	52

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

ptlf. on 6-17-74

74 CIV. 2300

TITLE OF CASE

JUDGE ~~CONLIN~~

WILLIAM McQUILLAN

For plaintiff:

Harold I. Gold
10 East 198th St., Bronx, NY 10468
367-4441

"ITALIA" SOCIETA PER AZIONE DI NAVIGAZIONE

For defendant:

Kirlin Campbell & Keating
120 Bway., N.Y. 10005 732-5520

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STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk	MAY 28 1974	<i>Kirlin C</i>	<i>15</i>	
J.S. 6 mailed <input checked="" type="checkbox"/>	Marshal		<i>651</i>	<i>5</i>	
Basis of Action: P.I. Ship Passenger ticket fee					
\$100,000	Witness fees				
Action arose at:	Depositions				
DOCKET SHEET, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK. PAGE 1.					
APP. P.2)					

WILLIAM McQUILLAN V. "ITALIA" SOCIETA PER AZIONE DI NAVIGAZIONE

74 CIV. 2300

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DATE	PROCEEDINGS	Date Order or Judgment Note
May 28-74	Filed Petition for removal from Supreme Court of State of N.Y. to the Southern District of New York	
May 28-74	Filed Undertaking for Removal sum of \$500. - Fireman's Fund American Ins. Co.	
May 28-74	Filed notice of removal from Supreme Court to the USDC for S.D. of N.Y.	
Jun- 3-74	Filed plaintiffs (McQuillan) response to removal of this action	HIG
Jun 4-74	Filed for Deft. ANSWER to Complaint	KCK
Jun-17-74	Filed plaintiff's JURY DEMAND	
Jul-12-74	Filed deft's affdvt. and notice of motion for an order dismissing action under Rule 12(b)(6) - ret. 8-5-74	
Jul-12-74	Filed defendants memorandum in support of above motion.	
Jul-18-74	Filed stip. and order that deft's motion for summary judgment is adj. to 9-16-74 -- Gurfein, J.	
Jul-12-74	Filed defendant's objection to purported request for production.	
Sep. 17-74	Filed Stipulation and order that the Deft's motion for Summary Judgment be adjourned to 10/7/74 at the same time and place - Werker, J.	
Sep-30-74	Filed plaintiff's memorandum of law in opposition to defendants motion for summary judgment.	
Sep-30-74	Filed plaintiff's affdvt. in opposition to defendants motion for summary judgment.	
Nov. 6-74	Filed plaintiff's Supplemental Affidavits of Harry Harris and Harold I. Gold.	
Oct-24-74	HEARING begun on motion to dismiss and concluded. Decision reserved -- Gurfein, J. Werker, J.	
Nov. 11-74	Filed Pltffs' Affidavit in opposition to the motion for summary judgment.	
Nov-12-74	Filed deft's reply memorandum of law in support of deft's motion to dismiss.	
Nov-19-74	Filed OPINION #41453...The defendant's motion for summary judgment is granted. So ordered. -- Werker, J. m/n	
Nov-21-74	Filed Judgment and order that the defendant have judgment against the plaintiff, dismissing the complaint. -- Clerk.	
Dec- 2-74	Filed plaintiff's affdvt. and notice of motion for a rehearing on motion for summary judgment, denying defendants motion for summary judgment and to vacate final judgment. - ret. 12-12-74	
Dec-10-74	Filed deft's affdvt. in opposition to pltf's motion for reargument.	
Dec-19-74	Filed plaintiff's notice of appeal to the USCA for the 2nd Circuit from memorandum and order granting deft's motion for summary judgment and judgment docketed Nov-21-74. - copy mailed to Grlin Campbell & Keating, Esqs.	
Dec-23-74	Filed William McQuillan's Undertaking for costs on appeal - \$250.00 Fidelity and Deposit Co. of Maryland.	
Dec-23-74	Filed MEMORANDUM that plaintiff's motions for reargument rehearing and redetermination are denied. So ordered. - Werker, J. m/n	
Dec-26-74	Filed pltf's notice of appeal to the USCA for the 2nd Circuit from order denying pltf's motion for reargument. Copy mailed to Grlin Campbell & Keating, Esqs.	
Jan-06-75	Filed notice that the record on appeal has been certified and transmitted to the USCA on 1-6-75.	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM McQUILLAN,

Plaintiff,

- against -

"ITALIA" SOCIETA PER AZIONE
DI NAVIGAZIONE,

Defendant.

AFFIDAVIT

74 Civil 2300

(MIG)

STATE OF NEW YORK }
COUNTY OF NEW YORK }

ss.:

BRUNO A. FOREL, being duly sworn, deposes and says:

I am the New York Claims Manager of defendant Italia Societa Per Azioni Di Navigazione - Genova (hereinafter referred to as Italian Line), and I am fully familiar with the operations of Italian Line, with the pleadings herein, and with the facts and circumstances involved in this motion.

This affidavit is respectfully submitted in support of Italian Line's motion to dismiss the plaintiff's action on the ground that it was not commenced within one year from the occurrence of his alleged injuries and is therefore time-barred pursuant to the plaintiff's passage contract. (A specimen contract booklet, which is identical in form to the booklet issued to the plaintiff, is annexed as Exhibit "A".)

The plaintiff instituted this action in the Supreme Court of the State of New York, County of New York on April 5, 1974 by service of a summons (Exhibit "B") only. Defendant appeared in the action and demanded a complaint, and on or about May 6, 1974 the plaintiff served a complaint (Exhibit "C") on the attorneys for Italian Line. On or about May 28, 1974, defendant Italian Line removed the action from the Supreme Court of the State of New York, County of New York to the United States District Court, Southern District of New York.

AFFIDAVIT OF BRUNO A. FOREL IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT.

(ABP. P: 4)

Thereafter, the defendant served its answer (Exhibit "D") in which it specifically reserved its defense based on the failure of the plaintiff to institute suit within one year as required by his passage contract.

In his complaint, plaintiff alleges he suffered personal injuries through the negligence of Italian Line on February 7, 1973 while he was a passenger aboard its vessel, the SS MICHELANGELO. By failing to commence the action until April 5, 1974, plaintiff has failed to comply with Articles 13 and 14 of his passage contract, which provide in pertinent part as follows:

"Art. 13 - NOTICE OF CLAIM - (a) The Company shall not be liable for any claim for loss of life or injury unless written notice thereof with full particulars be lodged with the Company or its agents within six (6) months from the day when the death or injury occurred in respect of any claim where Section 4283A of the Revised Statutes of the United States shall apply.

Art. 14 - TIME LIMIT ON CLAIMS - Suit to recover on any claim against the Company shall be instituted:

(a) as to claims mentioned in subdivision (a) of Article 13 above, within one (1) year from the day when the death or injury occurred;..."

The passage contracts in use by Italian Line were substantially revised in 1970. The new form passage contract was issued to plaintiff on January 10, 1973. Plaintiff did not embark aboard the MICHELANGELO until February 3, 1973.

A review of the specimen copy of the plaintiff's contract booklet (Exhibit "A") shows that the limitation provisions are clearly embodied within the general contractual provisions. The words "PASSAGE CONTRACT" appear in English and three other languages on the front cover of the booklet in large black print, along with a prominent white lettering on a blue background at the bottom in both Italian and English as follows:

"TERMS OF PASSAGE CONTRACT.
PASSENGERS ARE KINDLY REQUESTED

TO READ THE CONDITIONS OF THIS
CONTRACT BEFORE ACCEPTING."

The terms and conditions of the contract commence on the cover immediately thereafter in Italian and English, and continue through the first six pages of the booklet. The plaintiff retained his contract booklet including these first six pages containing its terms and conditions.

Italian Line's records reveal that the plaintiff's failure to institute suit within the one year limitation is inexcusable. When Italian Line requested particulars concerning the plaintiff's claim in 1973, it informed the plaintiff and his lawyer that its correspondence was being "written without prejudice to any of our rights under the passage ticket or otherwise". See copy of Italian Line's letter to the plaintiff dated March 6, 1973 (Exhibit "E"), and copy of Italian Line's letter to his attorney dated May 3, 1973 (Exhibit "F") which enclosed a copy of the March 6, 1973 letter to the plaintiff.

Accordingly, it is clear that the plaintiff had ample notice of the terms and conditions of his passage contract, and that he should be bound by them.

WHEREFORE, it is respectfully requested that the Court enter an order dismissing the plaintiff's action based on his inexcusable failure to commence suit within the one year time limitation contained in his passage contract.

M. Forek

Sworn to before me this
2nd day of July, 1974.

Alfonso Marinelli
Notary Public

ALFONSO MARINELLI
NOTARY PUBLIC, State of New York
No. 62-7716670
Qualified in Richmond County
Commission Expires 12/31/76

AFFIDAVIT OF BRUNO A. FOREK

(APP. P.6)

WILLIAM MCQUILLAN,
ONLY COPY AVAILABLE



Nº 8536003

al trasporto qui indicato della persona o delle persone qui nominate, in conformità alle condizioni CONTENUTE NEL PRESENTE CONTRATTO DI TRASPORTO, STAMPATE SU QUESTA PAGINA E SULLE PAGINE 3, 4, 5, 6.

Art. 1 - INCEDIBILITA' DEL BIGLIETTO

Il presente biglietto di passaggio è valido solo per la persona, o le persone, cui è intestato e per la nave, sistemazione e data di partenza qui indicate e non è cedibile.

Art. 2 - PREZZO DI PASSAGGIO

La Società si riserva il diritto di modificare il prezzo del passaggio prima della partenza della nave per qualsiasi crociera o per il viaggio di andata e/o ritorno. In tal caso il passeggero dovrà pagare la differenza prima dell'imbarco oppure avrà il diritto alla risoluzione del contratto ed al rimborso della somma versata per il trasporto non effettuato, dedotte le provvigioni dovute agli agenti.

Art. 3 - MANCATA PARTENZA DEL PASSEGGERO

Il passeggero che non si presenta in tempo per la partenza, o che per qualsiasi ragione non si imbarca, non ha diritto ad alcun rimborso della somma versata per il passaggio.

Art. 4 - CANCELLAZIONE TEMPESTIVA DEL PASSAGGIO

Qualora prima della partenza della nave il passeggero intenda recedere dal suo contratto di passaggio, la Società, a sua richiesta, si adopererà, nei limiti del possibile, per vendere la sistemazione indicata in questo contratto. Se detta sistemazione verrà venduta, la Società rimborserà al passeggero la somma pagata da lui o dal suo agente meno 10% di diritti di cancellazione spettanti alla Società. L'eventuale rimborso sarà effettuato dalla Società nel Paese e nella valuta in cui avvenne detto pagamento.

the transportation described herein to the person or persons named herein, subject to the terms SET FORTH IN THIS PASSAGE CONTRACT, PRINTED ON THIS PAGE AND ON PAGES 3, 4, 5, 6.

Art. 1 - TICKET NON-TRANSFERRABLE

This passage ticket contract is valid only for the person, or persons, herein named and for the vessel, accommodation and sailing date herein indicated, and is not transferrable.

Art. 2 - PASSAGE FARE

The Company reserves the right to change the passage fare before the sailing of the vessel on any cruise, or for the outward and or homeward voyage. In such case, the passenger must pay the difference before embarkation or he shall have the right to cancel the contract and have the amount paid for the unused passage refunded, less commissions to agents.

Art. 3 - FAILURE OF THE PASSENGER TO SAIL

The passenger who does not timely present himself for the sailing, or who for any reason does not embark, is not entitled to any refund of the passage fare.

Art. 4 - TIMELY CANCELLATION OF PASSAGE

If prior to the sailing of the vessel the passenger intends to cancel the passage contract, the Company shall, at his request, reasonably endeavor to sell the accommodation indicated in this contract. If this accommodation is sold, the Company will refund to the passenger the amount paid by him or his agent less 10% cancellation charges accruing to the Company. Such refund, if any, shall be made by the Company in the Country where and in the currency with which this passage was paid.

Art. 5 - CHANGE OF ACCOMMODATIONS

The Company reserves the right to assign to the passenger accommodations

PASSAGE BOOKLET AND TICKET USED ON DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT AS EXHIBIT "A" (ACTUAL SIZE)

(APP.P. 7)

EXHIBIT A

Art. 5 - CAMBIAMENTO DI SISTEMAZIONE

La Società si riserva il diritto di assegnare al passeggero una sistemazione diversa da quella precedentemente assegnatagli. Se il prezzo della sistemazione sostitutiva è inferiore, la Società rimborserà la differenza.

Art. 6 - RITARDO, MODIFICA O SOPPRESSIONE DEL VIAGGIO

La Società ha facoltà, per cause dipendenti o meno dal proprio controllo, di cancellare o terminare il viaggio, far effettuare scali alla nave in porti diversi da quelli fissati, ometterne alcuni, iniziare il viaggio da un porto diverso da quello stabilito, adibire la nave ad altra linea e/o servizio, anticipare o ritardare la data e/o l'ora di partenza originariamente annunciata.

Art. 7 - ITINERARIO - TRASBORDI

Il Comandante ha pieno diritto di procedere senza pilota, di rimorchiare o di farsi rimorchiare e di prestare assistenza ad altre navi in qualunque circostanza, di deviare dalla rotta prevista in qualunque direzione, per qualunque distanza e per qualsiasi scopo, di ritardare o di terminare il viaggio, e di trasbordare il passeggero ed il suo bagaglio su qualsiasi altra nave o su altro mezzo di trasporto, appartenente alla Società o meno, diretti al porto di destino.

Art. 8 - CONDIZIONI SANITARIE E COMPORTAMENTO DEL PASSEGGERO - La Società in qualunque momento ed a sua assoluta discrezione ha facoltà di rifiutare di trasportare, o può sbarcare o espellere qualsiasi passeggero in qualunque porto o luogo, qualora le sue condizioni sanitarie o fisiche, o la sua condotta arrechino pregiudizio alla sicurezza della nave, o molestia agli altri passeggeri.

Art. 9 - RESPONSABILITA' DEL PASSEGGERO

Sono a carico del passeggero tutte le spese, imposte, tasse di imbarco o sbarco, diritti fissi o altre spese similari; inoltre egli sarà tenuto a risarcire alla Società ogni contravvenzione, multa, spesa e danni e/o onere

other than those previously booked. If the price of the substituted accommodations is lower, the Company will refund the difference.

Art. 6 - DELAY, CHANGE OR CANCELLATION OF VOYAGE

The Company may, whether or not from causes beyond its control, cancel or terminate the voyage, have the vessel call at ports other than those scheduled, omit some of these ports, commence the voyage from other than the port scheduled, put the vessel in other line or service, or advance or delay the scheduled date and hours of sailing.

Art. 7 - ITINERARY; TRANSSHIPMENTS

The Master has full authority to proceed without pilots, to tow or to be towed and assist vessels in all circumstances, to deviate from the ordinary route in any direction, to any distance and for any purpose, to delay or to terminate the voyage, and to transfer the passenger and his baggage to any other vessel or to any other means of transportation, whether belonging to the Company or not, bound for the port of destination.

Art. 8 - HEALTH CONDITION AND CONDUCT OF THE PASSENGER

The Company at its sole discretion and at any time may refuse to transport, may land or reject any passenger at any port or place because of health or physical condition or because of conduct impairing the safety of the vessel, or because of conduct inconveniencing other passengers.

Art. 9 - PASSENGER'S RESPONSIBILITY

The passenger shall bear all expenses, taxes, embarkation or landing charges, stamped duties and other similar expenses; he shall also reimburse the Company for any penalties, inconveniences, fines and expenses which through his fault the Company may incur or may be assessed by Port Authorities, Customs, Health Officers, or by any other Officers of any Country whatsoever.

cui, per sua colpa, la Società possa essere soggetta o che possa essere messa a carico della Società da parte delle Autorità Portuali, Doganali, Sanitarie o di qualunque altra Autorità di qualsiasi Paese.

Art. 10 - FATTI VERIFICATISI AL DI FUORI DELLA NAVE

La responsabilità della Società, qualora non sia diversamente esclusa in altri articoli di questo contratto, è strettamente limitata a fatti verificatisi a bordo di navi di sua proprietà o di navi da essa noleggate e non si estende a fatti accaduti altrove, inclusi quindi, ma senza limitarsi, a fatti avvenuti durante escursioni e o gite a terra, servizi di natanti o traghetti, trasbordi, trasporti su altre navi o mezzi, collegamenti tra le navi della Società e quelle di altri vettori, ed in genere fatti ricollegantisi a servizi resi da prestatori autonomi che non sono agenti o dipendenti della Società.

Art. 11 - BAGAGLIO

(a) Il bagaglio, che comprende sia il bagaglio a mano che i bauli, deve contenere esclusivamente effetti personali del passeggero. Il quantitativo di bagaglio che ogni passeggero può trasportare in franchigia è stabilito dalle tariffe della Società. (b) Il passeggero, al momento dell'imbarco, deve consegnare in custodia al Comandante qualsiasi arma bianca o da fuoco. (c) Il passeggero non deve includere nel suo bagaglio, né tenere con sé o nella sua cabina manoscritti, danaro in contanti, gioielli o oggetti preziosi di qualunque genere aventi un valore superiore a U.S. Dollari 200. Gli oggetti di valore possono essere adeguatamente collocati nelle cassette di sicurezza della nave, in conformità alle condizioni stabilite dalla Società, purché vi sia spazio disponibile, oppure possono essere spediti come merce con regolare polizza di carico della Società. (d) Il passeggero non deve includere nel bagaglio, né portare a bordo, qualunque genere di esplosivi o oggetti infiammabili, pericolosi o nocivi. (e) Gli animali di qualunque specie non possono essere portati a bordo senza apposito biglietto rilasciato dalla Società. (f) Il passeggero deve imballare adeguatamente ciascun collo di bagaglio ed apporvi delle marche indelebili contenenti le sue generalità complete e indirizzo, nome della nave,

Art. 10 - OCCURRENCES BEYOND THE VESSEL'S LIMITS

The responsibility of the Company, when not otherwise excluded under any article of this contract, is strictly limited to occurrences on vessels owned or operated by it, and does not extend to occurrences elsewhere, including, but not limited to, excursions and/or shore trips, tender service, transshipments, transportation by other ships or other means, connections between its vessels and other carriers, and in general services provided by independent contractors who are not agents or servants of the Company.

Art. 11 - BAGGAGE

(a) Baggage, which includes handbags and trunks, must only contain personal effects of the passenger. The amount of baggage that each passenger may carry without additional charge is established in the Company's tariffs.

(b) The passenger, when embarking, must deliver to the Master any weapons or firearms for safekeeping.

(c) The passenger must not include in his baggage, nor keep on his person or in his cabin, manuscripts, cash, jewelry or valuables of any description worth over \$ 200 in U.S. Currency. Valuable articles may be appropriately placed in the ship's safe, subject to the regulations of the Company, provided space is available, or may be shipped as freight under the Company's regular bill of lading.

(d) The passenger must not carry as baggage, nor bring on board, any explosives or inflammables or other dangerous or harmful articles.

(e) Animals of any kind cannot be brought aboard without an appropriate ticket being issued by the Company.

(f) The passenger must securely pack and durably mark each piece of baggage with his full name and address, name of the vessel, cabin number and port of destination. He must also personally attend to the taking on board of his handbags, ascertain prior to departure that all of his baggage

PASSAGE BOOKLET AND TICKET USED ON DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT AS EXHIBIT "A" (ACTUAL SIZE)

(APP.P.8)

numero della cabina e porto di destino. Egli deve personalmente se-
le operazioni d'imbarco del suo bagaglio a mano, accertarsi prima
partenza che tutto il suo bagaglio sia a bordo ed ottenere il rilascio
ricevute per i colli sistemati nella bagagliera e/o nella stiva. (g) Il pas-
seggero deve dichiarare prima dell'imbarco il valore del suo bagaglio e,
in difetto di ciò, il valore totale di tale bagaglio sarà considerato non
superiore a U.S. Dollari 200. Qualora, prima dell'imbarco, il passeggero
rilasci alla Società una dichiarazione scritta attestante che il valore del
suo bagaglio supera U.S. Dollari 200 e, al tempo stesso, paghi alla So-
cietà un supplemento nolo in ragione dell'un per cento (1%) sul maggior
valore, facendosi rilasciare relativa ricevuta, la responsabilità della Società
non supererà il suddetto valore dichiarato; in caso di avaria o perdita par-
ziale di cui la Società sia responsabile, questa risponderà proporzionalmente
di tale valore. In nessun caso tali valutazioni costituiranno presunzione di
valore reale. Tutte le disposizioni di cui sopra saranno applicabili indipen-
dentemente dal fatto che il bagaglio venga sistemato in cabina, nella бага-
gliera, in stiva o in qualunque altro posto. (h) Il bagaglio non ritirato al-
l'arrivo della nave sarà depositato a rischio e spese del passeggero.

Art. 12 - SERVIZI DI PRESTATORI AUTONOMI

Il passeggero dovrà pagare per le prestazioni sanitarie effettuate dal
medico o dai medici di bordo in conformità alle tariffe ufficiali, (di cui vi
sono copie a bordo) in vigore nel porto di iscrizione della nave. Il pas-
seggero riconosce che i servizi disponibili a bordo per sua comodità, e resi
da tali prestatori autonomi inclusi ma non limitati al barbiere, al parruc-
chiere per signora, manicure, massaggiatore, fotografo, istruttori, sono
unicamente a spese e rischio del passeggero stesso.

Art. 13 - NOTIFICAZIONE DEL RECLAMO

(a) La Società non sarà responsabile per alcun reclamo per morte o infor-
tunio a meno che non sia proposta a tale scopo una denuncia particolare-
ggiata per iscritto alla Società o ai suoi agenti entro sei (6) mesi dal
giorno della morte o dell'infortunio e ciò in relazione a qualsiasi reclamo

cui sia applicabile l'Art. 4283A Revised Statutes degli Stati Uniti. (b) La
Società non sarà responsabile per avaria o perdite del bagaglio a meno
che il passeggero, al momento della riconsegna, non li denunci agli ufficiali
di bordo o ai rappresentanti o agenti della Società nei rispettivi uffici del
porto di sbarco, e a condizione che la Società sia posta in grado di ac-
certare l'esistenza della perdita o dell'avaria al momento dello sbarco, oppu-
re, se si tratta di avaria o perdite non apparenti, non più tardi di dieci
giorni dalla riconsegna.

Art. 14 - PRESCRIZIONE

Tutte le azioni contro la Società dovranno essere promosse:

(a) se riguardanti i reclami previsti al paragrafo (a) del precedente articolo
13, entro un (1) anno dal giorno della morte o dell'infortunio;
(b) se riguardanti tutti gli altri reclami dovranno essere promosse entro un
(1) anno dall'arrivo del passeggero a destino o, in caso di mancato arrivo,
dal giorno in cui il passeggero avrebbe dovuto arrivare, con la seguente
eccezione: nei trasporti che hanno inizio e termine in Europa o in porti del
Mediterraneo, tali diritti si prescrivono in sei mesi.

**Art. 15 - MODIFICHE-SEPARABILITA' DELLE CLAUSOLE DEL CON-
TRATTO** - Nessuna alterazione o modifica generatrice di responsabilità
diverse da quelle qui stabilite sarà valida a meno che non venga fatta per
scritto e firmata da un rappresentante autorizzato della Società. Le clau-
sole del presente contratto saranno separabili ed indipendenti e l'illegi-
galità, inefficacia o invalidità totale o parziale di una singola clausola o
parte di essa non renderà illegale né invaliderà alcun altro paragrafo, clau-
sola o norma del contratto stesso.

Art. 16 - CAUSE

Salvo quanto diversamente qui stabilito, tutte le controversie che potessero
sorgere, dal presente contratto di trasporto saranno risolte in base alla
Legge Italiana, e tutte le cause contro il Vettore saranno promosse esclu-
sivamente davanti l'Autorità Giudiziaria Italiana.

is on board and obtain receipts for pieces placed in the baggage room
and/or in the hold.

(g) The passenger must declare the value of his baggage prior to embar-
cation and, unless he does so, its total value will be deemed not to
exceed \$ 200 in U.S. Currency. If, prior to embarkation, the passenger
delivers to the Company a declaration in writing that the value of his
baggage exceeds \$ 200 in U.S. Currency and, when doing so, pays the
Company additional charges at the rate of one per cent (1%) on such
excess, for which a written receipt must be obtained by him, the Com-
pany's liability shall not exceed such declared value; in case of damage or
partial loss for which the Company is liable, its liability shall be com-
puted on a pro-rata basis of the above valuations. In no case shall the
above valuations constitute a presumption of actual value. All of the
foregoing shall apply irrespective of whether the baggage is in the cabin,
in the baggage room, hold or elsewhere.

(h) Baggage not claimed upon arrival of the vessel will be stored at the
passenger's risk and expense.

Art. 12 - SERVICES BY INDEPENDENT CONTRACTORS

The passenger shall pay for medical services received from the ship's
doctor(s) according to the official tariffs (available on board) in force at
the home port of the vessel. The passenger agrees that services available
for his convenience on board ship and rendered by such independent con-
tractors, including but not limited to the barber, hairdresser, manicurist,
masseur, photographer, instructors, are solely at the risk and at the expense
of the passenger.

Art. 13 - NOTICE OF CLAIM

(a) The Company shall not be liable for any claim for loss of life or injury
unless written notice thereof with full particulars shall be lodged with the
Company or its agents within six (6) months from the day when the death
or injury occurred in respect of any claim where Section 4283A of the

Revised Statutes of the United States shall apply. (b) The Company shall
not be liable for loss or damage to baggage unless at the time of
re-delivery to the passenger he reports the loss or damage to the ship's
officers or to the Company's representative or agents at its offices or
agents' offices at the port of disembarkation, and unless the Company shall
be allowed to ascertain the extent of the loss or damage at that time or if
the loss or damage is not apparent, not later than ten (10) days after
re-delivery.

Art. 14 - TIME LIMIT ON CLAIMS

Suit to recover on any claim against the Company shall be instituted:

(a) as to claims mentioned in subdivision (a) of Article 13 above, within
one (1) year from the day when the death or injury occurred;
(b) as to all other claims, within one (1) year from the passenger's arrival
at destination or, in the case of non-arrival, from the day on which the
passenger should have arrived, with the following exception: as to passages
commencing and ending in Europe or in the countries of the Mediter-
ranean, the prescription of the rights mentioned in this sub-article is of
six (6) months.

Art. 15 - AMENDMENTS; SEPARABILITY OF CONTRACT TERMS

No alteration or amendment creating responsibilities other than those
herein set forth shall be valid unless made in writing and signed by the
duly authorized representative of the Company. The terms of this contract
shall be separable and the illegality or invalidity of any articles in whole
or in part shall not effect or invalidate any other article, paragraph, clause
or provisions thereof.

Art. 16 - SUITS

Unless otherwise provided herein, all controversies arising out of this pas-
sage contract shall be determined according to Italian Law, and any
suits brought against the Carrier may be brought only before the judicial
authority of Italy.

PASSAGE BOOKLET AND TICKET USED ON DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT AS EXHIBIT "A". (ACTUAL SIZE)

ONLY COPY AVAILABLE

Itallia Soc. per Azioni di Navigazione - Genova - Cap. Soc. 10.000.000.000 interamente versato <small>Il presente biglietto di passaggio è emesso sulla base delle condizioni stampate sulla copertina e sul foglio n. 30-B. NON TRASFERIBILE</small> <small>Subject to the conditions printed on the cover of this ticket which form part of this contract - NOT TRANSFERABLE</small>				A) AL PORTO D'IMBARCO <small>(non valido per il passaggio)</small> ADVICE PORTION <small>(not good for passage)</small>		BIGLIETTO DI PASSAGGIO PASSAGE CONTRACT		N° 8536003	
CLASSE <small>CLASS</small>		NAVE DI REGISTRO ITALIANO <small>ITALIAN FLAG SHIP</small>		DATA DI PARTENZA <small>DATE OF SAILING</small>		ORA DI IMBARCO <small>EMBARKATION TIME</small>		BASE DELLA TARIFFA <small>FARE BASIS</small>	
DA <small>FROM</small>		A <small>TO</small>		ORA DI PARTENZA <small>TIME OF SAILING</small>		NOLO <small>FARE</small>		ETA <small>AGE</small>	
NOME DEI PASSEGGERI / NAME OF PASSENGERS:		CLASSE <small>CLASS</small>		TOTALE NOLI <small>TOTAL FARES</small>		CABINA <small>ROOM</small>		LETTO <small>RED BERTH</small>	
EMESSO IN CONNESSIONE CON / ISSUED IN CONNECTION WITH:		DATA <small>DATE</small>		BIGLIETTO N° <small>TICKET No.</small>		NOLO <small>FARE</small>		SERVIZI <small>FACILITIES</small>	
INDIRIZZO DEI PASSEGGERI / PASSENGERS' ADDRESS:		TASSE <small>TAXES</small>		TOTALE <small>TOTAL</small>		VALUTA INCASSATA / CURRENCY PAID		TIMBRO E FIRMA DELL'UFFICIO EMITTENTE <small>STAMP & SIGNATURE OF THE ISSUING OFFICE</small>	
PER USO DELLA COMPAGNIA / FOR COMPANY'S USE ONLY:		EMESSO IN SOSTITUZIONE DI: <small>ISSUED IN EXCHANGE FOR:</small>		IMPORTO <small>VALUE</small>		LUOGO E DATA DI EMISSIONE <small>PLACE & DATE OF ISSUE</small>		CODICE DELL'AGENTE PRODUTTORE <small>AGENT'S CODE</small>	
COMMISSIONE <small>COMMISSION</small>		SALDO INCASSATO <small>BALANCE COLLECTED</small>		COMMISSIONE <small>COMMISSION</small>		COMMISSIONE <small>COMMISSION</small>		COMMISSIONE <small>COMMISSION</small>	

PATTI E CONDIZIONI. PAGG. 1-8

TERMS & CONDITIONS: PAGES 1 THROUGH 8

Considerate le limitazioni di responsabilità della Società previste dalle condizioni di passaggio, si consigliano i Sigg. Passeggeri di provvedere alla assicurazione del proprio bagaglio.

In view of the limits in Company's liability as per Terms of Passage Contract, Passengers are advised to insure their baggage.

NORD SUD CENTRO AMERICA / MEDITERRANEO
 NORTH SOUTH CENTRAL AMERICA / MEDITERRANEAN
 NORTE SUR CENTRO AMERICA / MEDITERRANEO
 AMERICA DO NORTE, DO SUL, CENTRAL / MEDITERRANEO

CROCIERE
 CRUISES
 CRUCEROS
 CRUZEIROS

DIC/83025/70/300.000

PASSAGE BOOKLET AND TICKET USED ON DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT AS EXHIBIT "A". (ACTUAL IZE)

(APP. P.10)

ONLY COPY AVAILABLE

C 10G—Summons with Notice, Blank Court.
Personal Service.

APR 5 1974 at 2.00 P.M.
COPYRIGHT 1973 BY JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 F. HANGE PL. AT BROADWAY, N. Y. C. 10004

G. ATTY'S
-10
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WILLIAM McGUILLAN

Plaintiff

against

"ITALIA"-SOCIETA' PER AZIONE DI
NAVIGAZIONE

Defendant

Index No.

Plaintiff designates
NEW YORK

County as the place of trial

The basis of the venue is
DEFENDANT RESIDES IN
NEW YORK COUNTY

Summons with Notice

Plaintiff resides at

5 VARNEY AVE.
HUNTINGTON STATION
County of NASSAU

To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, January 15th, 1974

Defendant's address:

1 Whitehall St.

New York City, N.Y.

Notice: The object of this action is

Action for damages for personal
injuries suffered by plaintiff due to

The relief sought is defendant's negligence

Damages in the sum of \$100,00.

HAROLD I. GOLD

Attorney(s) for Plaintiff
Office and Post Office Address

No. 10 East 198th St.
Bronx, N.Y. 10468
212-367-4441

Upon your failure to appear, judgment will be taken against you by default for the sum of \$100,000.
with interest from 19 and the costs of this action.

EXHIBIT B

(APP. P.11)

AS A FIRST DEFENSE

5. That the said William McQuillan and his wife were passengers aboard the SS MICHELANGELO solely by reason of a ticket contract between themselves and the defendant, a copy of the provisions of which is annexed; and, having failed to comply with the notice of claim and the time limitations provided in Article 13 and Article 14 of the said contract, they may not recover herein.

Italian Line

ONLY COPY AVAILABLE

CLAIMS DEPARTMENT

March 6, 1973

Mr. William McQuillan
5 Varney Avenue
Huntington Station, New York 11743

Re: SS MICHELANGELO
Our File: MI-1887/643

Dear Mr. McQuillan:

This will acknowledge receipt of your letter of February 13, 1973, written to our General Manager, which was referred to us for reply.

We sincerely regret any embarrassment or inconvenience resulting Mrs. McQuillan and you from the occurrence on board of the MICHELANGELO.

While our doctor could not find any objective symptoms, resulting from this incident, we would greatly appreciate your remitting to us a report from the doctor presently treating you and any medical or other bills encountered in this connection. We shall then be in a better position to evaluate your demand.

In the meantime, please note that the above is written without prejudice to any of our rights under the Passage Ticket or otherwise and must not be construed as an admission of liability in the premises.

Very truly yours,

ITALIAN LINE

BAF:jl

B. A. Forel, Manager
Claims Department

EXHIBIT E

(APP. P.13)

Italian Line

CLAIMS DEPARTMENT

ONLY COPY AVAILABLE

May 3, 1973

Harold I. Gold, Esq.
10 East 198 Street
Bronx, N. Y. 10468

Re: SS MICHELANGELO
William McQuillan
Our Ref: MI-1337/843

Dear Mr. Gold:

We are in receipt of your communication of April 17, 1973 and have duly noted that Mr. McQuillan has retained you on the subject matter. We are sending to you enclosed photostatic copy of our letter addressed to him on March 5 which we herewith confirm.

Waiting to hear from you, we remain

Very truly yours,

ITALIAN LINE

B. A. Forel, Manager
Claims Department

BAF:ab
Enc.

EXHIBIT F

(APP.P.14)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM McQUILLAN,

Plaintiff,

- against -

"ITALIA" SOCIETA PER AZIONE
DI NAVIGAZIONE,

Defendant.

STATEMENT PURSUANT
TO GENERAL RULE 9(g)

74 Civil 2300 (MIG)

The following is a statement by the defendant of the material facts as to which it contends there is no genuine issue to be tried on its motion for summary judgment based on plaintiff's inexcusable failure to commence suit within one year as required by U.S.C. §183b and his passage ticket contract.

1. In his complaint, plaintiff alleges he suffered personal injuries through the negligence of the defendant on February 7, 1973 while he was a passenger aboard its vessel, the SS MICHELANGELO.

2. Plaintiff commenced the action in the Supreme Court of the State of New York, County of New York by service of a summons on April 5, 1974, and the action was subsequently removed to this court by the defendant.

3. The passage contract booklet and 28 U.S.C. § 183b require that the plaintiff institute an action within one year after his alleged accident occurred.

4. The plaintiff purchased a passage contract booklet on January 10, 1973 for a voyage aboard the MICHELANGELO commencing on February 3, 1973. (A specimen copy of the passage contract booklet is annexed to the affidavit of Bruno A. Forel as Exhibit A.)

5. The plaintiff retained the passage contract booklet when he boarded the vessel and still has the booklet in his

DEFENDANT'S STATEMENT UNDER RULE 9(g) USED ON MOTION FOR
SUMMARY JUDGMENT

(APP.F.15)

possession or in the possession of his attorney.

6. By failing to commence his action for nearly fourteen months after his alleged accident, the plaintiff has failed to comply with the terms and conditions of his passage contract booklet and 28 U.S.C. §183b.

Dated: New York, New York

Yours, etc.

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant

By

A Member of the Firm
120 Broadway
New York, New York 10005

HIG
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM McQUILLAN,

Plaintiff,

-against-

"ITALIA" SOCIETA PER AZIONE
DI NAVIGAZIONE,

74Civ11 2300
(M.I.G.)

Defendant.

State of New York)
County of Bronx) ss.;

WILLIAM McQUILLAN, being duly sworn, deposes and says that he is the plaintiff herein and makes this affidavit in opposition to defendant's motion for summary judgment, being fully familiar with all the facts herein.

This is an action for personal injuries suffered when I sat down upon a deck chair aboard defendant's vessel SS MICHEL-ANGELO which broke under me, throwing me to the deck and injuring me severely. This occurred February 7, 1973, in the Caribbean Ocean while I was a full paying passenger.

In answer to an advertisement of Liberty Travel Service, defendant's authorized agent, I inquired about a cruise on the above vessel and made reservations for myself, wife, daughter and son-in-law for the cruise leaving New York on February 3, 1973. The reservations were made in the early part of October, 1972, and a deposit paid. At that time no discussion was ever had between me and "Liberty" regarding any terms, conditions, stipulations, agreements or limitations contained in any passage ticket. None was shown to me at that time. "Liberty's" reservation memorandum is annexed Exhibit "A".

Thereafter and on December 12, 1972, I paid to "Liberty" the balance due of the above passage fare in the amount of \$ 1,700.00. This is evidenced by their receipt, Exhibit "B", dated December 12, 1972, and the Franklin Savings Bank Teller's Check counterfoil, dated December 12, 1972, in the amount of \$ 1,200.00, Exhibit "C-1", and my personal check bearing the same date in the amount of \$ 500.00, Exhibit "C-2".

Nothing was ever stated in "Liberty's" advertisement that acceptance of its offer of passage was limited or conditioned upon anything contained in the passage ticket.

PLAINTIFF McQUILLAN'S AFFIDAVIT-9/23/1974, IN OPPOSITION TO MOTION.

(APP.P.17)

ONLY COPY AVAILABLE

At the time I paid my passage no tickets were shown to me nor did the travel agent of "Liberty" discuss with me any of the terms, provisions, conditions, agreements or limitations of my passage. In fact the tickets were delivered to me at a subsequent date and just shortly before sailing on the cruise.

When I paid my passage fare in full at that time and place any "contract" between defendant and me was fully and completely consummated and finalized. We had had our meeting of the minds on the terms of the price I was to pay and the accommodations I was to receive, the dates and length of passage, and the ports of call the defendant was to carry me to. We had no agreement that defendant could thereafter change the terms of our "contract" by thereafter inserting in my passage ticket other terms, provisions, conditions agreements or limitations without my consent and without any consideration being provided for.

The only other terms of the passage "contract" that could be implied would be that defendant would provide me with a safe, seaworthy vessel properly outfitted with safe, seaworthy equipment, fittings and gear, and staffed by a competent, experienced, capable master, officers and crew.

My party boarded the vessel in New York on February 3rd, 1973. Before boarding we presented ourselves with tickets at defendant's office on the pier and our tickets picked up by defendant. At no time thereafter did we ever see our tickets again. At no time were we ever asked to sign the tickets and in fact never did sign them.

My attorney has shown to me an exhibit attached to defendant's answer and included as defendant's "Exhibit D" in it's moving papers purporting to be part of my passage ticket contract. It is three and one half pages in length, printed in very large type and has as its heading the words: "TERMS AND CONDITIONS OF PASSAGE CONTRACT".

I absolutely deny that I have ever seen or been given any such document, which measures approximately seven inches by ten inches in size. My attorney informs me that he has seen a similar document in the defendant's office and that it is apparently an office manual or reference material. This document was never given to ^{me} as part of my ticket.

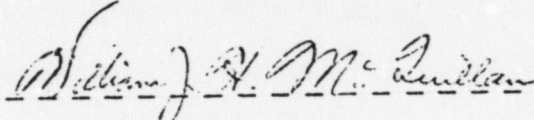
2

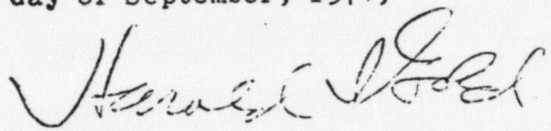
Upon my return to New York from the cruise I immediately notified defendant of my injuries by letter dated February 19, 1973, Exhibit "D". Defendant replied by letter dated March 6, 1973, in which it asked for a medical report and bills. Defendant did not in this letter or any subsequent correspondence inform me or my attorney that it was relying upon a one year Statute of Limitations in which to maintain a law suit. See Exhibit "E", the affidavit of Harold I. Gold, Esq. and exhibits annexed thereto.

I still continue to suffer the after effects of the injuries received on defendant's vessel which seriously interfered with my duties as Battalion Chief in the New York City Fire Department, and was a major factor in my subsequent retirement from active duty.

I have fully, fairly and completely stated the facts to my attorney and he informs me and I verily believe that I have a good, just and meritorious cause of action against the defendant. I intend to diligently proceed with this litigation and have demanded a jury trial herein.

Sworn to before me this 23rd
day of September, 1974,


WILLIAM McQUILLAN


HAROLD I. GOLD
Notary Public, State of New York
Qualified in Bronx County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

WILLIAM McQUILLAN,

Plaintiff,

-against-

74 CIVIL 2300

"ITALIA" SOCIETA PER AZIONE
DI NAVIGAZIONE,

(M.I.G.)

Defendant.

-----X

State of New York)

ss.;

County of Queens)

HARRY HARRIS, being duly sworn, deposes and says that he is the assistant manager of Liberty Travel Service located at 99-23 Queens Boulevard, Queens, N.Y. and that he made the travel arrangements for William McQuillan for the February 3rd, 1973 cruise of the SS Michelangelo.

On January 10, 1973 Mr. McQuillan informed me by phone that he would very shortly come in and pay the balance of his passage fare and I then immediately prepared the tickets for in advance of his arrival. At the same time I prepared the advice documents for transmission to defendant Italian Line herein. Although prepared on January 10, 1973, they were not delivered to him that day as he did not come in for them. In my letter dated September 11, 1974, I stated that the tickets were "issued" on that date, but clarifying that means that they were "issued" in the sense of being prepared and made valid for passage, but they were not physically delivered or given to Mr. McQuillan on January 10, 1973.

On January 12, 1973, he came into the office and paid the balance of his fare as shown by our office receipt and his cancelled checks. I have no recollection of when the tickets were physically delivered to Mr. McQuillan and my records show no date of actual delivery.

Harry Harris
HARRY HARRIS

Sworn to before me this

5th day of November, 1974

Harold I. Gold

HAROLD I. GOLD
Notary Public, State of New York

HARRIS AFFIDAVIT-11/5/1974 USED IN
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT.

(APP.P.20)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-x

WILLIAM McQUILLAN,

Plaintiff,

-against-

74 CIVIL 2300

"ITALIA" SOCIETA PER AZIONE
DI NAVIGAZIONE,

(M.I.G.)

Defendant.

-x

State of New York)
COUNTY OF NASSAU) ss.;

WILLIAM McQUILLAN, being duly sworn, deposes
and says that he is the plaintiff herein and makes this affidavit
in opposition to the motion for summary judgment herein.

The passage tickets herein were not delivered
to me at the time I paid the balance of passage fare on January 12th,
1973. I thereafter made several phone calls to Liberty Travel
Service for delivery of the tickets and eventually they were deliv-
ered to me about a week before sailing on February 3rd, 1973.

I have carefully examined the form of passage
ticket booklet used as defendant's Exhibit "A" and I do not find
therein any words stating:

"This contract ticket is issued by the Company and
accepted by the passenger on the following terms
and conditions."

as used and discussed in Murray-vs-Cunard S.S.Co. 235 N.Y.162, nor
do I find the words stating:

"It is mutually agreed that this contract ticket is
issued by the Company and accepted by the passenger
on the following terms and conditions."

as used and discussed in Siegelman-vs-Cunard White Star Ltd.,
2nd Cir.1955, 221 Fed.2, 189.

Sworn to before me this

William McQuillan
WILLIAM McQUILLAN.

7th day of November, 1974
Harold I. Gold
HAROLD I. GOLD
Notary Public, State of New York
No. 03-1470185
Qualified in Bronx County
Commission Expires March 30, 1975

75

McQUILLAN AFFIDAVIT-7/11/1974. USED IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT.

(APP.P.21)

Italliana Soc. per Azioni di Navigazione - Genova - Cap. Soc. 10.000.000.000 interamente versato Il presente biglietto di passaggio è soggetto alle condizioni stampate sulla copertina e sui fogli n. 3 e 4 - NON TRASFERIBILE Subject to the conditions printed on the cover of this ticket which form part of this contract - NOT TRANSFERABLE				C) MATRICE (non valida per il passaggio) AGENT'S RECORD (not good for passage)		BIGLIETTO DI PASSAGGIO N° 8550978 PASSAGE CONTRACT	
CLASSE CLASS	NAVE DI REGISTRO ITALIANO ITALIAN FLAG SHIP	DATA DI PARTENZA DATE OF SAILING	ORA DI PARTENZA TIME OF SAILING	ORA DI IMBARCO EMBARKATION TIME	BASE DELLA TARIFFA FARE BASIS		
DA FROM	A TO						
NOME DEI PASSEGGERI / NAME OF PASSENGERS:		NOLÒ FARE	ETÀ AGE	CABINA ROOM	LETTO BED/BERTH	SERVIZI FACILITIES	NAZIONALITÀ NATIONALITY
Mr. William McQuillan		770,00	"	"	"	"	"
Mrs. William McQuillan		585,00	A	"	"	"	"
EMESSO IN CONNESSIONE CON / ISSUED IN CONNECTION WITH:		TASSE TAXES		VALUTA INCASSATA / CURRENCY PAID		TIMBRO E FIRMA DELL'UFFICIO EMITTENTE STAMP & SIGNATURE OF THE ISSUING OFFICE	
NAVE/VOLO SHIP/FLIGHT	DATA DATE	BIGLIETTO N° TICKET No.	NOLÒ FARE	CLASSE CLASS	TOTALE NOLI TOTAL FARES		
					1255,00		
INDIRIZZO DEI PASSEGGERI / PASSENGERS' ADDRESS:					TASSE TAXES		
					11,00		
					TOTALE TOTAL		
					1266,00		
PER USO DELLA COMPAGNIA / FOR COMPANY'S USE ONLY:					EMESSO IN SOSTITUZIONE DI ISSUED IN EXCHANGE FOR:		
					No. 7552550		
					IMPORTO VALUE		
					22,00		
					SALDO INCASSATO BALANCE COLLECTED		
					11,00		
					COMMISSIONE COMMISSION:		
					1255,00		
					CODICE DELL'AGENTE PRODUTTORE AGENT'S CODE		
					33333333		

PLAINTIFF'S EXHIBIT "E"-2 USED IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT. PHOTOCOPY OF McQUILLAN'S TICKET-ACTUAL SIZE.

(APP.P.22)

ONLY COPY AVAILABLE

EMISSO IN CONCESSIONE CON: RESCISO IN CONCESSIONE WITH:				TOTALE NOLI TOTAL FARES TASSE TAX(ES)		CONTROLLORE NELLA VALUTA PAGATA EQUIVALENT IN CURRENCY PAID		DATA DI DATE OF	
NOME/COGNOME NAME/COGNOME	DATA DATE	BIGLIETTO N° TICKET NO.	NOLO FARE	CLASSE CLASS	TOTALE TOTAL	EMESSE IN SOSTITUZIONE DI: ISSUED IN EXCHANGE FOR:	LUOGO PLACE	EMESSE DAL ISSUED BY	FIRMA SIGNATURE
INDIRIZZO DEL PASSEGGERO: (SEE E/S INDIRIZZO NOLI S.U. O CANADA) IF W/S INDIRIZZO IN EUROPA PASSENGER'S ADDRESS: (IF E/S: US/CANADA ADDRESS IF W/S: EUROPEAN ADDRESS)					No. IMPORTO VALUE SALDO INCASSATO BALANCE COLLECTED	CODICE DELL'AGENTE N° AGENT'S CODE NO.			
PER USO DELLA COMPAGNIA: FOR COMPANY'S USE ONLY									

PHOTOCOPY OF ORIGINAL "SILVESTRI" TICKET. (ACTUAL SIZE)

PLAINTIFF'S EXHIBIT "F" USED IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

(APP. P.23)

[illegible]

FOR THE PASSENGER THE PASSENGER

(APP. P.24)

113. The person who, in the judgment of the Pilot or the Master, is or becomes so much disabled as to be unable to travel as directed or to perform other necessary and no portion contemplated by an agreement, whether or not any illness such as the flu or pneumonia is the cause of the disability, shall be deemed to be unable to perform the duties of a passenger and, if the Pilot or the Master has the authority to make an agreement of transportation, shall be deemed to be transported in accordance with the terms of any such agreement. If the Pilot or the Master has no authority to make an agreement of transportation, transportation may be arranged by the person and any such person may be loaded or left at any place at the expense of the Pilot, without any liability on his part except that upon completion of the contract, refund will be made for any unused transportation, but only to an amount for which the refund accommodations are made.

13. The King and the Master shall have liberty to come with arms or directions to several destinations, as to ports of call, stopovers, alternate destinations or otherwise, given by the government of any nation, or by any such a nation or proceeding to act with authority of such government, on behalf of the United Nations, or by the United Nations themselves acting on their behalf. In case of actual or threatened war, the operations, or hostilities, the vessel, either before or after proceeding to war, shall be part of destination, may, as the Master or the owners may deem proper, be used in or to any port or ports, notwithstanding any such rule or law for the purpose of assisting any such rule, duty sailing from any port or ports once or otherwise as convenient or/vice versa as any such obligation to return any of the parties named, or to terminate the voyage, or to return or revert to or from any port or ports, or any friendly or unfriendly or their property; also the vessel may sail with or without any kind of weapons, or provisions, rules and regulations as to navigation, course or otherwise applicable to times of peace; and sail armed or unarmed and with or without cargo.

23. By accepting or receiving this ticket, the passenger agrees that neither the Master, officers, crew of the vessel named in this ticket, nor any vessel owned or in the service of the Line and all those who are similarly or temporarily employed by such vessels or by the Line nor any person who performs any service on behalf of such vessels, the crew, the passengers or the passengers, shall in any way be in respect of anything he may negligently do or omit to do to the extent of or in connection with his employment, which shall exclude loss, damage or injury (including death or disability) to the person and/or property of the passenger or of any person or child connected with him or in his case. The passenger agrees to this exclusion of liability both on his behalf and on behalf of any person or child as aforesaid and also on behalf of his heirs and dependents. For the purpose of the agreement entered into in this clause, the Line shall be deemed to contract with the passenger on behalf of and for the benefit of all those mentioned in the first sentence and all persons shall to this extent be or be deemed to be parties to the contract contained in or evidenced by this ticket.

21. This contract is not transferable and is valid only for the passengers and any
cargoes and accommodations named therein.

23. The passenger for and on behalf of himself, his heirs, executors, administrators and assigns, guarantees to hold the carrier and the ship and the shipowners and the managing-owners harmless and to indemnify them against any claims or suits arising out of his injury or death or to satisfy the carrier or the ship or the shipowners or the managing-owners. If the passenger had not a defense in case the injury sustained or expense incurred by the carrier or the ship or the shipowners or the managing-owners or the passenger for and on behalf of himself, his heirs, executors, administrators and assigns, the carrier and the ship and the shipowners and the managing-owners are not obliged to pay to the liner and the carrier and the ship and the shipowners and the managing-owners any amount recovered from them or to be paid in defending against them. Insofar out of his death together with any expenses incurred by the carrier and the shipowners and the managing-owners are distinct from the carrier, the ship and the shipowners and the managing-owners are made by the carrier not only in its own behalf, but also on behalf of the shipowners and the managing-owners.

21. If the ship is not owned by or chartered by demise to the company or line by whom this ticket is issued (as may be the case notwithstanding anything that appears to the contrary), this ticket shall take effect only as a contract with the owner or demise charterer as the case may be as principal, made through the agency of the said company or line who act as agents only and shall be under no personal liability whatsoever in respect thereof.

11. The Line shall not be liable in any respect except for its want of due diligence in maintaining, equipping, or manning the conveyance, or in rendering it fit for its actual service, or for inefficient supervision or conduct, and all exceptions, exemption and limitations and conditions of the Line's contracts or of any other person for whose act or neglect the Line would otherwise be liable; but in so far as any provision of this contract may be unenforceable as contrary to law, such provision shall be deemed modified to such extent as to make it not inconsistent with such law.

Passengers must be recommended to the Line on demand before landing.

13. This contract must be surrendered to the Line on demand before sailing.

Endorsements:

9-1A 5-81 DRC 4532 Printed in U.S.A.

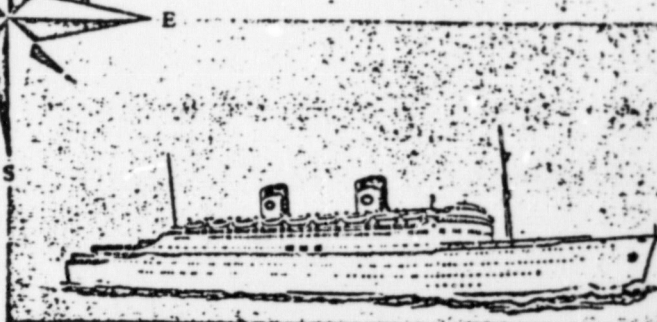
9-1A 5-81 DRC 4532 Printed in U.S.A.

(APP. P. 27)



**NATIONAL
HELLENIC
AMERICAN
LINE**
S.A.

PASSAGE
CONTRACT
TICKET



Each passenger should carefully examine this ticket, particularly the conditions on pages 2, 3, 4 and 5.

The Passenger or Passengers named herein, by accepting or using the passage contract ticket, and the Carrier, National Maritime American Line, S.A., by issuing the same, mutually agree that the Carrier will provide the Passenger with passage as stated herein, subject to the terms appearing herein, and the terms hereof shall not be deemed waived by the Carrier unless by an express written waiver issued by the Master or an executive officer of National Maritime American Line, S.A.

NOTICE: The Passenger's attention is particularly directed to the Terms and Limitations appearing on this and the following pages of this Contract.

The provisions hereof shall be separable and the invalidity of any provision shall not effect the validity or enforceability of any other provision hereof.

[illegible]

3. (a) The Carrier shall be entitled to the full benefit of all rights, immunities and limitations of or exemptions from liability contained in any law of the United States or other country or place whose laws may be applicable. This Contract shall not be assumed to give rise to a personal contract of the Carrier.

[illegible]

3. The Carrier may, with or without notice, and before, at, or after the commencement of the voyage, abandon or cancel the

revolve, delay or advance the scheduled time of sailing or arrival, withdraw the vessel from service, discontinue service between any port, and/or change any part or parts of call, deviate from the scheduled voyage, change accommodations or substitute any other vessel or require the Passenger to transfer to another vessel. In any such case, and whether before or after embarking, the Carrier shall not be liable to the Passenger for any expenses incurred by the Passenger thereby for hotel or board bills, traveling expenses or any other expenses, or for loss or damage or expenses occasioned thereby, directly or indirectly, to the Passenger or his property. The Carrier may, in its option, arrange for suitably equivalent transportation by another Carrier and/or by other means of transportation at the sole risk of the Passenger and such carriage shall be under and subject to the passage contract of such substituted carrier.

[illegible]

(b) The ship may carry contraband and may sail armed or unarmed, with or without convoy, and with or without lights.

(c) The scope of the voyage contemplated is the carriage of passengers, mail and cargo or any of them, in the Carrier's general trade which, for such or any other or incidental purposes may or may not include all usual, scheduled, customary, ordinary or advertised routes, ports and places, whether named in the passage contract or not, and other routes, places or procedures referred to herein.

(d) Anything done in accordance with this Article shall be deemed as authorized and within the intended and control voyage. The provisions of this Article are not to be restricted by any words of the passage contract, whether written, stamped, printed or incorporated herein.

5. Inl The Carrier or the Master shall have liberty to comply with any orders, regulations, requests or suggestions of any government, de facto or de jure, or department thereof or by any person acting or purporting to act with the authority of such government or department or by any committee or person having or purporting to have, under the terms of the insurance on the vessel, the right to do so or to approve the voyage.

[illegible]

PAGE 02

(APP. P.28)

Carrier responsibility for, nor liable for any expense of, the passenger as landed. The Carrier shall be entitled to reasonable extra compensation, over and above the agreed passage money, for extra services rendered to the passenger by reason of any of the above mentioned circumstances. The Carrier shall not be liable for failure to embark the passenger in violation of any of the above mentioned circumstances, nor for any loss or expenses to the passenger occasioned by the failure of the vessel, for any cause whatsoever, to sail at the appointed day or by the cancellation or variation of the sailing date.

4. (a) The Carrier shall not be liable to the Passenger for any loss of life, personal injury or delay to the Passenger or for delay in, damage or delay to the baggage or property of the Passenger whatsoever, even though resulting from the negligence of the Carrier or of those for whom the Carrier would otherwise be responsible.

10. If liability for any such loss or damage is to be determined in a place where such jurisdictional liability is in effect or enforceable then and in that event the Carrier shall not be liable to the Passenger for loss of the personal injury or injury to the Passenger or for any loss, damage or delay to the baggage or property of the Passenger unless caused by the Carrier's negligence, and the burden of proving such negligence shall be on the party asserting it, and it is agreed that there shall not be any presumption or inference of negligence because of the occurrences or facts out of which any claim arises.

[illegible]

(b) Any refunds or payments for which the Carrier may be liable for unused transportation deposits for "on board" money, provisional or prepaid contracts or otherwise to whomsoever paid, and whether before or after the contract voyage, shall be made by the Carrier only in the currency of the country in which this passage was purchased, provided, however, that the Carrier, at its sole option, may make payment of the refund in the currency of any other country at the official rate of exchange prevailing at the time payment is made.

(d) All charges involving payment of money shall be due and payable day by day immediately when they are incurred. The Passenger will pay all such charges in full and without any set off, counterclaim or deduction. All charges may be due to the Carrier hereunder shall be paid at the option of the Carrier in United States currency and if with the Carrier's permission is paid in the currency of a foreign country, then at Carrier's option at the current or official rate of exchange. The Carrier shall have a lien on the baggage and any other property of the Passenger for all charges whatsoever now or may be incurred hereunder due from the Passenger or incurred by the Carrier with respect to the Passenger, and may enforce this lien by public or private sale in any manner and without notice. The proceeds of the sale shall be applied toward the settlement of the Carrier's charges against the Passenger and the balance, if any, shall be paid to the Passenger. The Passenger shall be responsible for the payment of all such charges in any manner and without notice. The proceeds of the sale shall be applied toward the settlement of the Carrier's charges against the Passenger and the balance, if any, shall be paid to the Passenger.

8. In every passenger paying at least half fare is allowed twenty-five (25) cubic feet or, at the option of the carrier, two hundred (100) lbs. of baggage free of charge. Every passenger will pay at the current rate for every additional cubic foot or pound of baggage above the amount allowed to such passenger as indicated above, but such payment shall not increase the limit of value and liability elsewhere provided in this passage contract. All baggage must be securely marked and labeled.

and must indicate whether or not it is required during the voyage and it must be delivered by the passenger to the Carrier's servants upon the pier not later than twenty-four (24) hours before scheduled sailing time. The Carrier shall not be liable for loss, damage or delay resulting from failure of passenger to mark clearly each piece of baggage with his full name and address, together with the name of the vessel, expected sailing date, cabin number and destination.

(b) Notwithstanding the provisions of this Article and irrespective of offer of payment therefor, the Carrier reserves the right to limit the amount of baggage to be carried by each Passenger in excess of twenty-five (25) cubic feet.

9. Every Passenger is prohibited from drinking and using any carry on or have on board any article whatsoever of an inflammable, explosive or dangerous nature, and if non-compliance is observed, the Passenger(s) does carry any such article, such Passenger shall be liable for any damages to himself and any other person and to his, her and/or the Carrier's property that may be sustained as a consequence. Such article, if deemed dangerous by the Master of the vessel, may be thrown overboard or destroyed at any time without liability. The Passenger agrees to be liable and indemnify the Carrier for all such damages or destruction. The Passenger bringing on board any article forbidden by law, or which may not conform to local customs, regulations or other regulations of any country or countries, shall be liable for any consequences in the course of the voyage. Passengers must not leave firearms on board unless written permission has been obtained from the Carrier, and if that permission has been obtained, firearms must be deposited with the Master.

10. (a) If the Vessel carries a surgeon, physician, barber, hairdresser, manicurist, tailor, laundryman, or other personal service personnel, it is done solely for the convenience of the Passenger and services rendered by them to the Passenger are at the latter's expense. Any such person in dealing with giving service to, treating or operating upon a Passenger is not the servant or agent of the Carrier and the Carrier shall not be liable for any omission, negligence or damage done by such person.

(b) A Passenger visiting or using any athletic or recreational apparatus, equipment or sports does so at his own risk of injury, damage or loss to person or property.

11. Each Passenger is hereby notified that the Vessel on the voyage for which this Contract is issued carries explosives, dangerous or hazardous articles, including but not limited to those defined by law.

12. (c) If no board or elsewhere, at any point, a Passenger delays or is detained because of injury, illness, disability or

12. (a) If on board or elsewhere, at any point, a Passenger dies or is declared deceased or infirm; or if a Passenger is quarantined, or because of any action of the authorities as to such Passenger, or for any reason not the fault of the Carrier, such

Passenger and any Passenger remaining with such Passenger and, if such Passenger be traveling with a husband, parent or relative, such husband, parent or relative, shall be jointly and separately liable to the Carrier for the amount of any unpaid fares, taxes, charges, dues, and/or expenses, and shall be jointly and separately liable to the Carrier for the amount of any unpaid fares, taxes, charges, dues, and/or expenses, and shall be jointly and separately liable to the Carrier for the amount of any unpaid fares, taxes, charges, dues, and/or expenses.

or other guardian, their such husband, parent, relative and/or guardian, also shall be jointly and severally liable to the child for any maintenance provided, and for all expenses of maintenance or other expenses borne, incurred or assumed voluntarily or

otherwise by the Carrier for or on account of such Passenger or any Passenger remaining with such Passenger or arising out of such Passenger's stay on board the vessel, shall be charged at the rate of \$10.00 per day or such higher sum as may be determined by the Carrier.

of such delay or detention, maintenance or board or elsewhere to be charged at the rate of \$10.00 per day or such higher rate as the Carrier may fix, and children in proportion to full fare paid. Passengers carried beyond destination without fault of the Carrier may be required to pay at the above mentioned rates for any additional maintenance on board occasioned thereby and for extra transportation.

(b) Passengers assume responsibility for obtaining passports, visa, entry permits, and other documents, including health and vaccination certificates which are or may be required by governmental or other authorities. If the failure of Passenger to obtain any such documents or otherwise comply with such requirements results in a refusal, delay or denial of the Carrier or the vessel or if it is deemed a violation of any law, order or direction of any governmental or other authority, the Carrier shall have no further obligation to transport or to act as transporter on the line Passenger and no refund shall be made except in the discretion of the Carrier. Some of the passenger contracts or embarking on of the Passenger shall not be construed as a representation or guarantee by the Carrier that the Passenger so embarking will be admitted to the country of destination or to any other country or that the Passenger will not be refused admission to the country of destination by the Passenger in the event that he is not admitted.

at which the Vessel may call and the Carrier assumes no responsibility to the Passenger or the Cargo for the

1) Passengers will pay all taxes, port charges, embarkation or landing expenses, stamps, health fees, quarantine dues and charges, and in case of detention by reason of quarantine or any regulation, order or requirements no matter for what reason, Passengers will bear all risks and expenses thereby incurred.

[illegible][illegible][illegible]

10. Every responsibility of the Carrier hereunder shall be limited to that period only while the Passenger and his baggage and other property are being transported over the Carrier's own line to a port or place in which the vessel may safely go. All other transportation or service (including railroad automobile, air or other shore transportation, transportation by tender or tugboat, or otherwise) by the Carrier, shore excursions, shore hotel or accommodations or services shall be at the risk of the Passenger and the Carrier shall be under no responsibility in connection therewith and any services rendered by the Carrier shall be at the expense of the Passenger. The Carrier shall be under no responsibility for any property or services received only if the Passenger agrees to pay the same cash to those furnishing such transportation or service.

[illegible]

(b) The provisions of said Sec. 4281 shall apply to the Passenger's baggage whether or not in the custody of the Carrier and whether or not taken on board.

42) The Carrier does not undertake hereunder to carry as baggage of the Passenger, and is under no liability whatsoever for birds, animals, reptiles, fish, samples, tools or waste, scientific instruments, household goods and furnishings, property of others, jewelry, valuables, glassware, hazardous or other, or any other articles whatsoever not necessary for the Passenger's personal use on the voyage covered hereby, and transportation thereof must be arranged for by the Passenger with Carrier in writing and shipment or receipt on board.

10. Animals and birds, subject to the provisions of Article 181 hereof, may be taken on board only in accordance with the terms of the written order issued by the Carrier, and carried by him in the cabins, service, or on the open deck, but not otherwise in the places provided on board the vessel. Any special food or services therefor shall be supplied by and at the expense of the Passenger. The Passenger is responsible for any and every damage to things or to third persons caused by the animals he takes on board. The Carrier is not responsible for accidents, loss, injury or death of the Passenger's animals and birds taken on board during the voyage or during embarkation or disembarkation and the carcasses may be disposed of at the Captain's sole discretion.

1P. 10. If the vessel is equipped with lock-boxes or receptacles which are available without charge to Passengers for their convenience, it is agreed that whatever articles, property or valuables of whatever description a Passenger places in such lock-boxes shall not be deemed delivered to or put in possession of the Carrier or deemed to have been so delivered or placed on board by the Passenger.

11. It is agreed that the Carrier shall not be under any liability whatsoever for loss, conversion of, or damage to such effects, property or valuables from any cause whatsoever even though resulting from the negligence of the Carrier or its agent.

19. The Passenger shall not be entitled to contribution nor be required to contribute in general average with respect to his Person or his Property.

(APP. P.29)

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20. The fare for the transportation under this contract is based partly upon the valuation of the Passenger's baggage as provided for herein. Unless a higher value shall have been declared, as hereinafter provided, the value of the baggage of each Passenger paying full fare is agreed to be not more than \$100.00 for First Class and \$50.00 for Tourist Class. The value of the baggage of each passenger paying less than full fare is agreed to be proportionately less. If the value of the Passenger's baggage for any class exceeds the valuation above agreed to for that class and is so declared in writing by the Passenger to the Carrier and written upon this Contract ticket before embarkment, and a charge of one (1%) per cent on such excess value is paid to the Carrier, the value of such baggage shall be taken to be not more than the value so declared. Any articles brought on board during the voyage, such as are usually carried by passengers of the vessel pursuant to the contract, shall be treated as baggage and unless the value of such articles is declared by the Passenger and additional charges paid thereon as required by the Carrier, shall be included in the valuation provided in the second sentence of this paragraph, or such higher valuation as may have been declared by the Passenger as hereinafter provided. The valuations agreed to herein or declared by the Passenger or the actual value, if it be less, shall constitute the measure of damage with respect to any loss of, or damage to the Passenger's baggage.

21. Any liability of the Carrier for partial loss or damage to the baggage of any Passenger shall be computed by applying that percentage of the valuation as hereinafter provided or of the actual value, if it be less, obtained by comparison of the value of the lost or damaged baggage in good condition with the value of the Passenger's entire baggage if it had been delivered undamaged.

22. In the event of any claim for loss of life or bodily injury or any claim arising thereby or of any other claim whatsoever except as to those matters covered in Articles 17, 18 and 20 hereof, arising from any cause whatsoever for which the Carrier may be liable, the damages recoverable by the Passenger shall not exceed \$5,000.00 provided, however, that in no event shall the recovery exceed the actual amount of damage sustained. Dollars in the Contract refer to the currency of the United States of America.

23. The Carrier shall not be liable for any claim whatsoever of the Passenger however and whenever arising unless written notice thereof with full particulars shall be delivered to the Carrier or its agent as follows:

1. Within six (6) months from the day when the death or injury occurred in respect of any claim for loss of life or bodily injury in any case where Sec. 4283A of the Revised Statutes of the United States shall apply.
 2. Within two (2) months after the death of the Passenger when occurring on board or when occurring within (15) days after landing or the abandonment or breaking up of the voyage in respect of any claim for loss of life, except where said Sec. 4283A shall apply.
 3. Within three (3) months from the date of the vessel's sailing on the voyage specified herein in respect of any claim for refund of freight or passage money.
 4. Within fifteen (15) days after the Passenger shall be landed or the voyage is abandoned or broken up, in respect of any claim whatsoever unless such claim is included within one of the three categories last mentioned.
- But to recover on any claim against the Carrier shall not be maintainable unless:
1. Suit is initiated within one (1) year from the day when death or injury occurred in respect of any claim for loss of life or bodily injury in any case where said Sec. 4283A shall apply.
 2. Suit is initiated within six (6) months after the Passenger shall be landed from the vessel or the voyage shall be abandoned or broken up or after the death of the Passenger when occurring on board, as the case may be, in respect of any claim whatsoever unless such claim is included within category (1) just mentioned. Any action by the Carrier or its agents or attorneys in considering or dealing with claims shall not be construed a waiver of any such requirements.

23. (a) The Carrier shall not be liable as Carrier, warehouseman, bailee, warehouseman, or in any other capacity, for any claim whatsoever, whether or not and whenever occurring, arising from act of God, piracy or accidents of the sea or other waters or all navigation, causes beyond the Carrier's control, compliance with any direction whatsoever by any government or by any person purporting to act under the authority thereof, collision, stranding, seizure or arrest, fire on board the vessel or in other craft or on shore, from any cause or whatsoever occurring without the personal design or neglect of the Carrier or for any act committed by enemies or robbers, or for theft, pilferage, armed or unarmed or of capture, seizure, detention, interference of any sort or any act of pirates, rulers, governments, powers or other power, or legal process, or for epidemics, pestilence, wars, rebellions, hostilities, riots, or law, lockouts, stoppage of labor or labor troubles with the Carrier's employees or others, stoppage or lack of fuel, explosion, bursting of boilers, stress, or for breakage, accidents or derangements of machinery or machinery or accessories, fault or error in the management or navigation of the vessel notwithstanding any other or general provision herein, breakage, chipping, denting, staining or discoloration, disappearance or loss of articles or goods, water, sea-water, heat, artificial heat, smoke, frost, ice, earthquakes, floods, wrecks, eddies, rips, rot, mold, rust, decay, insect, vermin, or any other defect in any part of the hull, boilers, machinery or appurtenances of the vessel even though existing at the time of embarkment or at the beginning of the voyage provided the Carrier shall have used due diligence to make the vessel seaworthy, or if the Carrier shall have used due diligence in the selection of its crew, employees and independent contractors, for their competency or skill or weight, not committed by any of them, or from any other or different cause of whatsoever kind unless shown to be due to the Carrier's negligence.

(b) In no case shall the Carrier be liable for the loss of, or damage to, any baggage whatsoever in the Passenger's possession if the door, windows or port-holes are left open or unlocked, any voyage to the Carrier's satisfaction.

(c) In no case shall the Carrier be liable for any loss of baggage of the Passenger, unless, prior to or at the time of bringing same on board the vessel the Passenger shall have given to the Carrier a detailed list of the baggage including the baggage later claimed to have been lost, with the value of each article, and unless the loss shall have been due to the Carrier's negligence.

24. (a) The Carrier does not undertake to transport the Passenger or his baggage between the embarkment and the landing where the landing is not reached by the vessel, such transportation by others to be at the Passenger's risk and expense and without liability or responsibility on the part of the Carrier.

(b) The liability of the Carrier in any capacity whatsoever under this ticket is limited to the time the Passenger and/or his baggage are on board the vessel. The Carrier acts only as agent for the Passenger in arranging any transportation beyond its own line and is not under any responsibility and will have no liability therefor.

(c) With respect to any loss, damage or claim whatsoever arising before or after the relationship of Carrier and Passenger ceases, for which the Passenger may make claim, the Carrier shall be entitled to all exemptions from and limitations of liability and other defenses contained in the Contract.

25. Every adult Passenger traveling with any others whether or not listed herein, shall be responsible for their conduct and behavior. Such Passenger shall be liable to the Carrier and reimburse it, for all loss, damage or delay sustained by the Carrier because of any act or omission of said persons.

26. The Passenger and, if another, the Purchaser hereof covenants and warrants that he or they have read this Passage Contract and that he or they are duly authorized on behalf of all the Passengers named herein by accepting this ticket to agree to and be bound by all the stipulations, terms and conditions herein contained in every contingency whatsoever and whatsoever occurring and even in the event of no during deviation or unseaworthiness of the vessel of the voyage or subsequently.

National Hellenic American Line, S.A.
Carrier.

PAGE 18

IMPORTANT INSTRUCTIONS IF THIS TICKET IS ISSUED FOR THE RETURN PORTION OF A ROUND TRIP BOOKING

If this ticket is issued for the return portion of a round trip booking, passenger(s) must confirm ticket reservation at least 2 weeks before scheduled date of sailing in person or by mail to the National Hellenic American Line office or agency nearest to the port of embarkation by delivering or sending to that office or agency the Declaration Form appearing on the reverse side of page 7 of this ticket after duly filling in all details for each passenger.

Upon receipt of the completed Declaration Form, such National Hellenic American Line office or agency will send to the passenger(s) detailed embarkation instructions. It is, therefore, necessary that the address to which such instructions are to be sent be clearly shown on the Declaration Form.

FOR EMBARKATION AT	RESERVATION SHALL BE CONFIRMED TO	FOR EMBARKATION AT	RESERVATION SHALL BE CONFIRMED TO
PIRAEUS	National Hellenic American Line, 10 Venizelos Street - Athens 625571	NEW YORK	Home Lines Agency Inc. 42 Broadway - New York 4, N. Y. 4 HOMELINES Digby 4-6363
MESSINA	Destefano Speciale & Co. Via 1° Settembre, 84 - Messina 11.106	BOSTON	Home Lines Agency Inc. 8 Newbury Street, Boston 16, Mass. 4 HOMELINES Commonwealth 6-6165
	or Fratelli Cosulich Via E. Amari, 43 - Palermo 214297	HALIFAX	Furness, Withy & Company, Ltd. 71-73 Upper Water St., Halifax, N.S. 4 FURNESS 423-6111
PALERMO	Fratelli Cosulich Via E. Amari, 43 - Palermo 14297	NASSAU	R. H. Curry & Co. Ltd. 203 Bay Street - Nassau 4 CURRYSON 3845
NAPLES	Fratelli Cosulich Via Depretis 19 - Naples 312049		
GIBRALTAR	J. Lucas Imossi & Sons Ltd. Cambrian House 967		

PAGE 19

PHOTO COPY OF "LIPTON" TICKET. PLAINTIFF'S EXHIBIT "P-2" USED IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT.

(APP. P. 30)

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NATIONAL Hellenic AMERICAN LINE		PASSAGE CONTRACT		ADVICE TO ACCOMPLISHING DEPT. agent to send this copy and Chapter D, with remittance to Company's office to which he reports		NH 72069	
SUBJECT TO CONDITIONS OF CONTRACT ON PAGES 2, 3, 4, 5		CLASS	Cruise	SHIP	Queen Frederica	SCHEDULED DATE OF SAILING	Feb 20, 1965
FROM		New York		TO		New York	
FARE BASIS		1-WAY <input type="checkbox"/> - M.R.T. <input type="checkbox"/> - CRUISE <input checked="" type="checkbox"/> - OTHER					
MR. & MRS. G. LIFTON	GIVEN NAME(S)	OCEAN FARE	AGE	ROOM	BED/ BERTH	FAIRIES	NATIONALITY
		275.00	Ad	R 27	A11		
		275.00					
ISSUED IN CONNECTION WITH (Company)		CHECKED		EQUIVALENT IN LOCAL CURRENCY		DATE OF ISSUE	
SHIP/FLIGHT	DATE	TICKET NO.	FARE	CLASS	TOTAL FARE(S)	550.00	
FB <input type="checkbox"/>					PORT TAX	4.00	
WB <input type="checkbox"/>					TOTAL		
IF EB, U.S./CANADA ADDRESS		PASSENGER'S ADDRESS		LESS AMOUNT PAID AS PER NO.		JAN 29 '65	
IF WB, EUROPEAN ADDRESS		OVERAGE		BALANCE RECEIVED		420 MADISON AVE.	
IF NASSAU/N.Y., NASSAU ADDRESS		DATE		LESS COMMISSION		SIGNATURE OF AGENT	
FOR COMPANY'S USE ONLY:				NET REMITTANCE		AGENT'S CODE NO.	

THIS STUB TO BE DETACHED ON ISSUANCE OF TICKET

NATIONAL Hellenic AMERICAN LINE		PASSAGE CONTRACT		F PASSENGER'S COPY - not good for passage		NH 72069	
SUBJECT TO CONDITIONS OF CONTRACT ON PAGES 2, 3, 4, 5		CLASS	Cruise	SHIP	Queen Frederica	SCHEDULED DATE OF SAILING	Febr. 20, 1965
FROM		New York		TO		New York	
FARE BASIS		1-WAY <input type="checkbox"/> - M.R.T. <input type="checkbox"/> - CRUISE <input checked="" type="checkbox"/> - OTHER					
MR. & MRS. G. LIFTON	GIVEN NAME(S)	OCEAN FARE	AGE	ROOM	BED/ BERTH	FAIRIES	NATIONALITY
		275.00	Ad	R 27	A11		
		275.00					
ISSUED IN CONNECTION WITH (Company)		CHECKED		EQUIVALENT IN LOCAL CURRENCY		DATE OF ISSUE	
SHIP/FLIGHT	DATE	TICKET NO.	FARE	CLASS	TOTAL FARE(S)	550.00	
FB <input type="checkbox"/>					PORT TAX	4.00	
WB <input type="checkbox"/>					TOTAL		
IF EB, U.S./CANADA ADDRESS		PASSENGER'S ADDRESS		LESS AMOUNT PAID AS PER NO.		JAN 29 '65	
IF WB, EUROPEAN ADDRESS		OVERAGE		BALANCE RECEIVED		420 MADISON AVE.	
IF NASSAU/N.Y., NASSAU ADDRESS		DATE		LESS COMMISSION		SIGNATURE OF AGENT	
FOR COMPANY'S USE ONLY:				NET REMITTANCE		AGENT'S CODE NO.	

PHOTO COPY OF "LIPTON" TICKET. PLAINTIFF'S EXHIBIT "P-2" USED IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT.

any sea-going vessel (other than tug
ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x
WILLIAM McQUILLAN,

Plaintiff,

- against -

"ITALIA" SOCIETA PER AZIONE DI
NAVIGAZIONE,

Defendant.
----- -x

MEMORANDUM AND ORDER

74 Civ. 2300

APPEARANCES:

HAROLD I. GOLD, ESQ.
Attorney for Plaintiff
10 East 198th Street
Bronx, New York 10468

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant
120 Broadway
New York, New York 10005

By: Louis J. Gusmano
John R. Geraghty
Of Counsel

HENRY F. WERKER, D. J.

This is but one more in a long line of "passage contract" cases reaching back at least as far as The Majestic, 166 U.S. 375 (1897). Plaintiff and his wife were passengers on a Caribbean cruise on the defendant's vessel, the S.S. Michelangelo. On February 7, 1973, four days after the start of the cruise, the plaintiff was injured when a desk chair on which he attempted to sit collapsed under him.

OPINION NO. 41453. MEMORANDUM & ORDER, HON. HENRY F. WERKER, D.J.

MICROFILM

NOV 19 1974

S.D. OF N.Y.

NOV 19 1 00 PM '74

#41453

On April 5, 1974, the plaintiff, alleging negligence on the part of the defendant, filed suit in the Supreme Court of the State of New York. Following what has become a common pattern in these cases, the defendant removed the case to this court on diversity grounds and then moved pursuant to Rules 12 (b) (6) and 56 of the Federal Rules of Civil Procedure for summary judgment based on a condition in the passage contract which limited the time for bringing suits against the defendant to one year from the date of the injury.

It is uncontroverted that the plaintiff purchased two tickets in New York from a travel agent for a cruise aboard the S.S. Michelangelo from New York to the Caribbean and back to New York. After making reservations and leaving a deposit in October, 1972, the plaintiff paid the balance due on January 12, 1973. The passage tickets were received by the plaintiff approximately one week before sailing, and according to the plaintiff's affidavit, were picked up by the defendant just prior to boarding and were never signed or seen by the plaintiff again.

In response to defendant's motion for summary judgment, the plaintiff argues that the terms and conditions contained in the "passage contract" were not incorporated into any "contract" because the standards for incorporation recently enunciated by this Circuit in Silvestri v. Italia Societa Per Azioni Di Navigazione (Italian Line), 388 F.2d 11 (2d Cir. 1968), were not satisfied. In Silvestri, Judge Friendly analyzed in detail

the two distinct lines of passage ticket contract cases which have involved the issue of incorporation of the numerous terms and conditions which every steamship company seems to include in their passenger tickets. One line originates with the doctrine established in The Majestic and disallows incorporation,² while the other follows Judge Cardozo's opinion in Murray v. Cunard Steamship Co., 235 N.Y. 162 (1923) and allows incorporation.³

According to Judge Friendly:

"[T]he thread that runs implicitly through the cases sustaining incorporation is that the steamship line had done all it reasonably could to warn the passenger that the terms and conditions were important matters of contract affecting his legal rights."⁴

After a detailed comparison of the ticket at issue in Silvestri with the forms used by other steamship companies, Judge Friendly concluded that "the Italian Line's ticket alleged to effect incorporation fell below what could reasonably have been expected" since "nothing whatever was done to impress the importance of the terms and conditions upon the passenger." Silvestri, supra, at 17. The task for this court then is to determine whether the passage contract in issue meets the Silvestri standards. In order to make this determination, a detailed examination of the defendant's passage contract must be made.⁵

As a starting point, it should be noted that the defendant in Silvestri and the defendant in this action are one and the same, the Italian Line. Thus, the defendant's new form

of passage contract must be "significantly more eye-catching" than its old one. Although the plaintiff has gone into excruciating detail to distinguish the Italian Line's new ticket from the Silvestri ticket and other tickets where incorporation was found, it is the court's conclusion that the new passage contract meets the standards set out in Silvestri, i.e., it is significantly more eye-catching, and it reasonably communicates to the passenger the fact that the terms and conditions are important matters of contract affecting his legal rights.

In Silvestri, supra, at 14, the ticket was described as follows:

[A] box bore in the upper right hand corner the words:

Biglietto Di Passagio
Passage Contract

followed by an identifying number, and in the lower right hand corner the validating stamp of the issuing travel agent. Almost all of the captions in the 'box' were in capital or bold face letters, the major exception being the following statements, which appeared in the upper left hand corner of the ticket in ordinary lower-case one-eighteenth inch type:

Il presente biglietto di passagio
e soggetto alle condizioni stampate
sulla copertina e sui fogli n° 1
e 2.

Subject to the conditions printed
on the cover of this ticket which
form part of this contract.

The inconspicuousness of these statements was increased by the fact that they were squeezed immediately below a caption in bold face and to the left of one in capital letters. The two "leaves" which are an integral part of the coupon retained by the passenger were headed "TERMS AND CONDITIONS" in bold face. Then followed 35 numbered paragraphs in very small print."

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The "ticket" portion of the passage contract in the case at bar is substantially the same as that in Silvestri. Inexplicably, the printing in the upper left hand corner is in even smaller type than that in Silvestri. Also, the words "terms and conditions: pages 1 through 6" appear in small type at the bottom right of the ticket. However, there are significant differences. The terms and conditions are no longer printed on "leaves" attached to the ticket portion. Instead, they are contained in an oblong booklet, bound at the left edge which has a cover, followed by 6 pages of terms and conditions, and then the "ticket" and several copies.

Across the top of the cover of the passage contract in white lettering on a blue background appear the words "Italian Line," "Italia Soc. Di Navigazione-Genova," and "Italmar." Slightly below these words, and in the center appear the words "Ships of Italian Registry." Approximately 3/40 of an inch below that line is a logotype consisting of three anchor devices arranged in a horizontal pattern approximately 5-1/8 inches in width and 2-3/8 inches high. Superimposed on this logotype in Italian, English, Spanish and Portuguese, in black lettering approximately 9/60 of an inch high, are the words "passage contract." Just below the logotype printed in two columns, the left hand column in Italian and the right hand column in English, in white lettering on the blue background, and in clearly legible type appears the following:

Terms of Passage Contract. Passengers are kindly requested to read the conditions of

this contract before accepting.
"Italia," Societa per Azioni di Navigazione,
hereafter referred to as "the Company,"
agrees to provide (continued page 2)

The wording continues onto the second page in smaller but
still legible type:

the transportation described herein to the
person or persons named herein, subject to
the terms set forth in this passage contract,
printed on this page and on pages 3, 4, 5, 6.

Pages 2, 3, 4, 5 and 6 then go on to state 16 "articles"
containing the terms of the contract. These terms are printed
in a two column approach, the left hand column in Italian and
the right hand column in English. The printing is small, but
legible, and the title of each article is printed in bold face
and in larger type.

The physical arrangement of the passage contract
described above is similar to that in Lipton v. National Hellenic
American Lines, 294 F. Supp. 308 (E.D.N.Y. 1068), and although
the warning on the cover of the Lipton ticket was phrased in
stronger terms,⁷ I have concluded that this passage contract
reasonably communicates the importance of the terms and conditions
to the passenger and therefore they are incorporated into the
contract.⁸

The finding that the terms and conditions were in-
corporated into the contract does not necessarily mean that
defendant's motion for summary judgment should be granted, for
there are other issues which must be examined including the
validity of Articles 13 and 14 of the passage contract, and

whether certain actions taken by the defendant subsequent to the filing of the plaintiff's notice of claim estop the defendant from asserting the time limitation conditions as a defense. These issues present the additional problem not raised by either party, of what law should be applied in determining these issues, since the passage contract contains the following provision:

Art. 16 - Suits

Unless otherwise provided herein, all controversies arising out of this passage contract shall be determined according to Italian Law, and any suits brought against the Carrier may be brought only before the judicial authority of Italy.

Preliminarily, it should be noted that this is not a case governed by Erie R.R. v. Tompkins, 304 U.S. 64 (1938), and Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487 (1941). The alleged tort was committed on the high seas and involves a defense based on a contract made in New York, by a New York plaintiff, with performance there and on the high seas. Thus "the substantive law to be applied [including choice-of-law rules] is the 'general maritime law' of which the ultimate expositor is the Supreme Court of the United States." Jansson v. Swedish American Line, 185 F.2d 212, 216 (1st Cir. 1950);⁹ Siegelman v. Cunard White Star, 221 F.2d 189 (2d Cir. 1955).

It must now be determined what choice of law rule¹⁰ would be applied under the "general maritime law." This question leads into the often confusing and sometimes metaphysical principles of conflict of laws.

In Siegelman v. Cunard White Star, 221 F.2d 189, 192

(2d Cir. 1955), the passage contract contained a clause providing "All questions arising on this contract ticket shall be decided according to English law with reference to which this contract is made." Judge Harlan concluded that the validity and interpretation of the contract were governed by English Law since "[t]he language of the clause, covering 'all questions,' indicates that validity as well as interpretation is embraced." Siegelman, supra, at 194.¹¹ This was taken to represent the intention of the parties even though the contract was a contract of "adhesion."¹² The pertinent clause in the case at hand is different from that in Siegelman since it is prefaced with the words "Unless otherwise provided herein" (emphasis added). Articles 13 and 14 of the passage contract [notice of claim, and time limit on claims] specifically refer to claims where section 4283A of the Revised Statutes of the United States shall apply (46 U.S.C.A. § 183b (1970)). Thus, following the reasoning in Siegelman, the statutory law of the United States, not Italian law, would be applied to determine the validity of Articles 13 and 14.

Other cases, however, treat the intention of the parties as only one factor to be considered and instead, apply a "grouping of the contracts" or "center of gravity approach." See, e.g., Jansson v. Swedish American Line, 185 F.2d 212 (2d Cir. 1950); Pisacane v. Italia Societa Per Azioni Di Navigazione, 219 F. Supp. 424 (S.D.N.Y. 1963); Caruso v. Italian Line, 184

F. Supp. 862 (S.D.N.Y. 1960); Fricke v. Isbrandtsen Company, 151 F. Supp. 465 (S.D.N.Y. 1957); McCaffrey v. Cunard Steamship Company, 139 F. Supp. 472 (S.D.N.Y. 1955); Mulvihill v. Furness, Withy & Co., 136 F. Supp. 201 (S.D.N.Y. 1955). Cf. Navegacion Coya, S.A. v. Mutual Boiler & Machinery Ins. Co., 50 Am. Mar. Cas., 650, 653 n.1 (S.D.N.Y. 1972); Liverpool & Great Western Steam Co. v. Phenix Ins. Co., 129 U.S. 397 (1889). This approach has been applied even when specific reference has been made in the contract to section 4283A of the Revised Statutes of the United States. See Mulvihill, *supra*; Fricke, *supra*.

As already discussed, the plaintiff in this case is a New York citizen, the contract was entered into in New York, the cruise originated in New York, and the alleged tort was committed on the high seas. Thus it appears that whether the intention of the parties conflict rule or the "grouping of contracts" or "center of gravity" approaches are applied, the validity of the contract provisions must be determined¹³ by the "general maritime law" of the United States. The applicable statute, 46 U.S.C.A. § 183b (1970)¹⁴ was enacted by Congress and its validity has repeatedly been upheld.¹⁵ See Ager, *supra*, at 1188; Jansson, *supra*, at 221; Schwartz v. S.S. Nassau, 345 F.2d 465 (2d Cir.), *cert. denied*, 382 U.S. 919 (1965); Scheibel v. Agwilines, 156 F.2d 636 (2d Cir. 1946); Moore v. American Seantic Line, 30 F. Supp. 843, 845 (S.D.N.Y. 1939).¹⁶

One final issue remains to be determined and that

(APP. P.40)

is the question whether the actions taken by the defendant subsequent to the plaintiff's filing of a notice of claim estop the defendant from asserting the time limitation conditions in the passage contract. ¹⁷ Upon his return to New York the plaintiff notified the defendant of his injuries by letter and asked for compensation. On March 6, 1973, the manager of the defendant's claims department acknowledged receipt of the plaintiff's request for compensation. The letter written to the plaintiff also contained the following statements:

While our doctor could not find any objective symptoms resulting from this incident, we would greatly appreciate your remitting to us a report from the doctor presently treating you and any medical or other bills encountered in this connection. We shall then be in a better position to evaluate your demand.

In the meantime, please note that the above is written without prejudice to any of our rights under the Passage Ticket or otherwise and must not be construed as an admission of liability in the premises.

On May 3, 1973, a copy of the defendant's letter to the plaintiff was sent to the plaintiff's lawyer.

There were several other items of correspondence between the two parties including: a letter from plaintiff's attorney to defendant on May 18, 1973, in which the attorney sent a copy of the plaintiff's doctor's report and offered the defendant an opportunity to have the plaintiff examined by defendant's physician; a reply by the defendant asking for

copies of the finalized bills, reserving the right to examine the plaintiff, and stating that "this is written to you without prejudice and should in no way be deemed an admission of liability in the premises, or otherwise"; a letter from plaintiff's attorney to defendant on March 25, 1974, in which a bill for x-rays was enclosed and which inquired whether the defendant intended to waive a physical examination of the defendant; and finally, a letter from the defendant to the plaintiff on April 1, 1974, informing the plaintiff that the one year limitation in the Passage Ticket for bringing suit had expired. This last letter was the first time that the defendant had mentioned the one year limitation.

The facts presented do not establish an estoppel. The letters sent by the defendant were written "without prejudice" and contained a denial of liability. There were no promises or offers of settlement or other representations made which would support the plaintiff's estoppel argument. ¹⁸

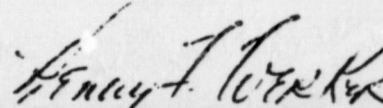
"The most that can be said is that defendant did not remind plaintiff through his attorney of the one-year deadline, and clearly the law imposes upon him no obligation to do so."

Johnson v. Swedish Transatlantic Lines (Rederiaktiebolaget Transatlantic), 368 F. Supp. 613 (S.D.N.Y. 1974). ¹⁹

The defendant's motion for summary judgment is granted.

SO ORDERED.

Dated: New York, New York
November 18, 1974



U. S. D. J. (APP.P.42)

NOTES

1. The applicable provisions of the passage contract read as follows:

Art. 13 - NOTICE OF CLAIM

(a) The Company shall not be liable for any claim for loss or injury unless written notice thereof with full particulars shall be lodged with the Company or its agents within six (6) months from the day when the death or injury occurred in respect of any claim where Section 4283A of the Revised Statutes of the United States shall apply.

Art. 14 - TIME LIMIT ON CLAIMS

Suit to recover on any claim against the Company shall be instituted:

(a) As to claims mentioned in subdivision (a) of Article 13 above, within one (1) year from the day when the death or injury occurred. . . .

It is conceded that the plaintiff gave notice of his claim within the six month period.

2. Cases where incorporation was not allowed include:
La Bourgogne, 144 F. 781 (2d Cir. 1906); The Minnetonka, 146 F. 509 (2d Cir. 1906); Smith v. North German Lloyd S.S. Co., 151 F. 222 (2d Cir. 1907); Baer v. North German Lloyd, 69 F.2d 88 (2d Cir. 1934); Maibrunn v. Hamburg-American S.S. Co., 77 F.2d 304 (2d Cir. 1935); Bellocchio v. Italia Flotte Riunite, 84 F.2d 975 (2d Cir. 1936); The Kungsholm, 86 F.2d 703 (2d Cir. 1936); Silvestri, supra; Owens v. Italia Societa Per Azione Navigazione Genova, 334 N.Y.S.2d 789 (Civil Court 1972), aff'd, 347 N.Y.S.2d 431 (Sup. Ct. 1st Dept. 1973).
3. Other cases following the Murray doctrine include:
Baron v. Compagnie General Transatlantique, 108 F.2d 21 (2d Cir. 1939); Foster v. Cunard White Star, 121 F.2d 12 (2d Cir. 1941); Geller v. Holland-America Line, 201 F. Supp. 508 (S.D.N.Y.), aff'd, 298 F.2d 618 (2d Cir. 1961), cert. denied, 370 U.S. 90 (1962); Lipton v. National Hellenic American Lines, 294 F. Supp. 308 (E.D.N.Y. 1968); Miller v. Lykes Bros. S.S. Co., 467 F.2d 464 (5th Cir. 1972).
4. Silvestri, supra, at 17.
5. At this point I feel it appropriate to note my agreement with Judge Friendly's statement in Silvestri that:

"To be sure, it can be said that all this is legalism, since Silvestri should have known the Italian Line had not gone to the trouble of printing the terms and conditions for the fun of it and would not have read them no matter what was said; and we confess some doubt how far the intensity of ticket reading by steamship passengers correlates with the strength of the invitation to indulge in it."

6. Plaintiff has submitted for the Court's inspection photo-static copies of the tickets at issue in Siegelman v. Cunard White Star, 221 F.2d 189 (2d Cir. 1955); Geller, Lipton, and the original ticket from Silvestri. Plaintiff literally makes a line by line analysis of these tickets in reference to size, type, print and format.
7. The following statement appears on the cover of the Lipton ticket: "Important Notice. Each passenger should carefully examine this ticket, particularly the conditions on pages 2, 3, 4 and 5." The top of the second page is headed "Conditions of Contract." Preceding the conditions is a statement which reads: "Notice: the passenger's attention is particularly directed to the terms and limitations appearing on this and the following pages of this contract." The coupon part of the ticket is marked: "Subject to the conditions of contract on pages 2-3-4-5."
8. The type of passage contract booklet used in this case and in Lipton was also found to satisfy the Silvestri standards by then District Judge Gurfein in Ager v. D/S A/S Den Norske Afrika-OG Australielinie Wilhelmsens Dampskibsselskab, 336 F. Supp. 1187 (S.D.N.Y. 1972), although summary judgment was denied because the plaintiff claimed that he never received the ticket.
9. In Siegelman, then Circuit Judge Harlan, characterized the question as "not a question of choice of laws, properly speaking, but rather a question of the division of competence between federal and state authority." Id. at 192.
10. In Jansson, the Court noted that "In developing and formulating approved rules of the general maritime law, the federal courts are necessarily confronted, from time to time, with choice of law problems; and the rules for determining such choices become themselves a part of the general maritime law as understood and applied in the United States." 185 F.2d at 218. As of the date of Jansson, there were no Supreme Court cases on the

ii

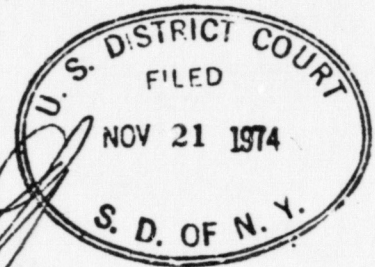
question so the court examined other federal precedents. In the case at bar, other federal precedents - usually involving similar personal injuries to passengers - were examined to determine the issues of incorporation, choice of law rules, and estoppel.

11. In Siegelman, the issues involved the validity and interpretation of the contract provisions, not whether the provisions were in fact incorporated into the contract. The court cited Foster v. Cunard White Star, 121 F.2d 12 (2d Cir. 1941) for the proposition that the entire ticket constituted the contract. This was explained in Fricke v. Isbrandtsen Company, 151 F. Supp. 465, 468 (S.D.N.Y. 1957) as follows: "In the Siegelman case, all of the incidents with respect to the making of the contract took place in the United States. Accordingly, the court could feel itself free to apply American contract notions in a choice of law context. This it did, supporting its finding of a provision by an earlier case [Foster] which held a steamship ticket to be a contract as a matter of substantive law." (footnote omitted). See also Jansson, supra, at 219. In the case at bar, the issue of incorporation has already been discussed, supra, and it should be noted that as with the other issues on this motion, the "general maritime law" of the United States was applied, not Italian law.

The restatement (second), Conflict of Laws, Section 187, Comment b, takes the position that choice of law provisions in adhesion contracts are usually respected, but will be scrutinized with care. See also the discussion of the restatement (second) position and the recent case of the Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972) in Prebble, Choice of Law to Determine the Validity and Effect of Contracts: A Comparison of English and American Approaches to the Conflict of Laws, Part I, 58 Cornell L. Rev. 433, 514 (1973).

12. Judge Frank filed a dissent in Siegelman in which he severely criticized adhesion contracts. See 221 F.2d at 204-206 and authorities cited therein.
13. More modern approaches to conflict of laws questions speak in terms of "government interests." See, e.g., Auten v. Auten, 308 N.Y. 155 (1954); Intercontinental Planning Corp. v. Daystrom, 24 N.Y.2d 372, 300 N.Y.S.2d 817 (1969); Prebble, supra, note 10. Under such an approach, the law of the United States would still be applied here. See the discussion of 46 U.S.C.A. § 183b, infra.

14. The statute states in pertinent part: "(a) It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred."
15. In Mulvihill v. Furness, Withy & Co., 136 F. Supp. 201 (S.D.N.Y. 1955) the court noted that: "It has been declared that the purpose of the relevant statute, 46 U.S.C.A. § 183b, is to regulate the 'relationship between a common carrier of passengers and passengers,' to remedy abuses which had arisen through the efforts of shipowners engaged in commerce carriage to limit unreasonably their obligations, and that 'the Congress has created a new public policy as to what it thinks to be reasonable, just and fair. It has arbitrarily set a period of time within which suit must be commenced.'" Id. at 207 (footnote omitted).
16. The conflict of laws issues discussed herein are of more than mere academic interest. If Italian law were held to apply, the validity of the time limitation conditions would be questionable. See Pisacane v. Italia Societa Per Azioni Di Navigazione, 219 F. Supp. 424 (S.D.N.Y. 1963).
17. This issue like the other issues in this case will be determined according to the "general maritime law" of the United States and not Italian Law. See Siegelman, supra, at 194 and Judge Frank's dissenting opinion at 199.
18. See Scheibel v. Agwilines, 156 F.2d 636, 638-39 (2nd Cir. 1946); Born v. Norwegian America Line, 173 F. Supp. 33, 34-35 (S.D.N.Y. 1959) (Weinfeld, J.); Siegelman v. Cunard White Star, 221 F.2d 189, 197-98 (2nd Cir. 1965). In Born, although Norwegian law governed, Judge Weinfeld concluded that there was no waiver or estoppel "as [they are] known to American courts." 173 F. Supp. at 34. In Siegelman, English law was applied and no estoppels found. Judge Frank, in his dissenting opinion, would have found an estoppel under "federal and New York decisions." 221 F.2d at 199. However, the facts in Siegelman presented a much stronger case for the plaintiff there since settlement offers had been made and the defendant had told the plaintiff that it was not necessary to commence an action.
19. Even though the court in Johnson applied Swedish law, the conclusion as to the estoppel was reached after "studying the exhibits and both Swedish and American law on the subject." 368 F. Supp. at 612. Contra, McCaffrey v. Cunard Steamship Company, 139 F. Supp. 472, 474-75 (S.D.N.Y. 1955) (summary judgment denied, English law applied).



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
WILLIAM McQUILLAN

Plaintiff

: 74 Civil 2300 (HFW)

-against-

JUDGMENT

"ITALIA" SOCIETA PER AZIONE DI
NAVIGAZIONE

:
Defendant

----- X

Defendant having moved the Court for summary judgment pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Henry F. Werker, United States District Judge, and the Court thereafter on November 19, 1974, having handed down its memorandum opinion granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendant "ITALIA" SOCIETA PER AZIONE DI NAVIGAZIONE, have judgment against plaintiff WILLIAM McQUILLAN, dismissing the complaint.

Dated: New York, N.Y.
November 21, 1974

Raymond F. Burghardt
Clerk

JUDGMENT DISMISSING COMPLAINT ON MOTION FOR SUMMARY JUDGMENT.

(APP. P.47)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM McQUILLAN,

Plaintiff-
Appellant

-against-

"ITALIA-SOCIETA PER AZIONE
DI NAVIGAZIONE,

Defendant-
Appellee.

PLAINTIFF-APPELLANT'S
NOTICE OF APPEAL

74 CIVIL 2300

(H.F.W.)

SIRS:

PLEASE TAKE NOTICE that the Plaintiff-Appellant above named hereby appeals to the United States Court of Appeals for the Second Circuit from the memorandum and order of the Hon. Henry F. Werker, Judge of the United States District Court for the Southern District of New York, dated November 18th, 1974, and docketed in the office of the Clerk of the within Court on November 19th, 1974, granting defendant's motion for summary judgment, and from the judgment of this Court dated and docketed November 21, 1974, granting judgment to the defendant against the plaintiff dismissing the complaint, and this appeal is taken from each and every part of said memorandum, order and judgment as well as against the whole thereof. Dated: New York, December 18th, 1974,

Yours, etc.,

HAROLD I. GOLD,
Attorney for William McQuillan,
Plaintiff-Appellant,
No. 10 East 198th Street,
Bronx, N.Y. 10468,
212-367-4441.

TO:

Hon. Raymond F. Burghardt,
Clerk of the United States District Court,
Southern District of New York,

Kirlin, Campbell & Keating, Esqs.,
Attorneys for "Italia"-Societa Per Azione Di Navigazione,
Defendant-Appellee,
No. 120 Broadway,
New York City, N.Y. 10005,
212-732-5520.

PLAINTIFF'S NOTICE OF APPEAL.

(APP. P. 48)

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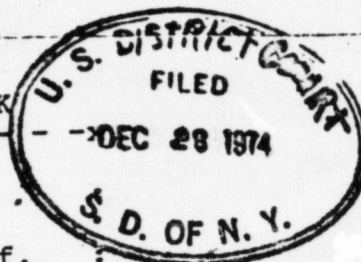
"ITALIA" Soc. per Azioni di Navigazione - Genova - Cap. Soc. Lit. 1.000.000.000 interamente versato ed è presente in ogni documento di viaggio e pagamento una quadrante stampata sulla copertura e sui fogli n. 1 e 2 - NON TRASFERIBILE and is present on every document of travel and payment on the cover of this ticket which form part of this contract - NOT TRANSFERABLE				ORGANIZZAZIONE SPEDIZIONE (non good for exchange)		DIMENSIONI DI PROGRASSO PASSAGE CONTRACT		No 8189195	
CLASSE CLASS First		NAVE DI REGISTRO ITALIANO ITALIAN FLAG SHIP Albatros		DATA DI PARTENZA DATE OF SAILING 11-11-1971		ORE DI IMBARCO DEPARTURE TIME 11-11-1971		BASE DELLA TARIFFA FARE BASIS	
DA FROM NEW YORK		A TO GENOVA		ORE DI PARTENZA TIME OF SAILING 17-00		NOLO FARE 5713.00 713.00		ETA AGE Ad M	
NOME DEI PASSAGGERI / NAME OF PASSENGERS:		Mr. William W. Owens Mr. William W. Owens		CABINA ROOM 160 16		LETTO BED/BERTH 112 11		SERVIZI FACILITIES YES 11	
NOME DEI PASSAGGERI / NAME OF PASSENGERS:		Mr. William W. Owens		CABINA ROOM 160 16		LETTO BED/BERTH 112 11		SERVIZI FACILITIES YES 11	
SPESO IN CONNESSIONE CON / ISSUED IN CONNECTION WITH:				VALUTA INCASSATA / CURRENCY PAID:		TIPOLOGIA E FIRMA DELL'UFFICIO EMISSIONE TYPE AND SIGNATURE OF THE ISSUING OFFICE			
HAVEVOLO SHIP/FLIGHT 00		DATA DATE 00		BIGLIETTO N° TICKET No. 00		NOLO FARE 00		CLASSE CLASS 00	
INDIRIZZO DEI PASSAGGERI / PASSENGER'S ADDRESS:				TOTALE NOLI TOTAL FARES 1426.00		TASSE TAXES 20.00			
200 Park Ave., NYC 972-3993				TOTALE TOTAL 1450.00		SPESO IN SOSTITUZIONE DI: ISSUED IN EXCHANGE FOR:			
PER USO DELLA COMPAGNIA / FOR COMPANY'S USE ONLY:				No. 4750-1 IMPORTO VALUE 1450.00		LUOGO E DATA DI EMISSIONE PLACE & DATE OF ISSUE			
00				SALDO INCASSATO BALANCE COLLECTED 1450.00		COPIA DELL'AGENTE RACCOMANDA AGENT'S CODE 00			

"OWENS" TICKET USED AS PLAINTIFF'S EXHIBIT "D" ON MOTION FOR
RE-ARGUMENT. (ACTUAL SIZE)

TERMS AND CONDITIONS

(APP. P. 59)

80
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



WILLIAM McQUILLAN,

Plaintiff,

- against -

"ITALIA" SOCIETA PER AZIONE DI
NAVIGAZIONE,

Defendant.

MEMORANDUM

74 Civ. 2300 (HFW)

-x

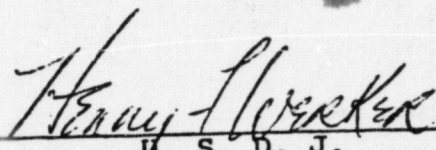
HENRY F. WERKER, D. J.

Plaintiff's motions for reargument rehearing and redetermination are denied. An examination of plaintiffs moving affidavit does not disclose any new facts or circumstances nor does it advance any arguments which were not heard fully upon the original motion. The case of Owens v. Italia Societa, 70 Misc.2d 719, 334 N.Y.S.2d 789 considered and cited by me in my initial decision (footnote 2), was decided upon the Silvestri v. Italia Societa, 388 F.2d 11 CA 2d 1968, format which is not the form used here.

SO ORDERED.

Dated: New York, New York

December 18, 1974


H. F. WERKER
U. S. D. J.

MICROFILM

DEC 24 1974

MEMORANDUM & ORDER DENYING PLAINTIFF'S MOTION FOR RE-ARGUMENT.
HON. HENRY F. WERKER, D.J.

(APP. P.51)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM McQUILLAN,

Plaintiff-
Appellant

-against-

"ITALIA"-SOCIETA PER AZIONE DI
NAVIGAZIONE,

Defendant-
Appellee.

FILED
U.S.D.C.
December 26-74
SDNY
PLAINTIFF-APPELLANT'S
AMENDED NOTICE OF APPEAL

74 CIVIL 2300-(H.F.W.)

SIRS:

PLEASE TAKE NOTICE that the plaintiff-appellant above named hereby appeals to the United States Court of Appeals for the Second Circuit from the memorandum and order of the Hon. Henry F. Werker, Judge of the United States District Court, Southern District of New York, dated November 18th, 1974 and docketed in the office of the Clerk of the within Court on November 19th, 1974, granting defendant's motion for summary judgment, and from the Judgment of this Court dated and docketed November 21, 1974, granting judgment to the defendant against the plaintiff dismissing the complaint herein, and from the memorandum and order of the said Hon. Henry F. Werker dated December 18, 1974 and docketed December 23, 1974, denying plaintiff's motion for reargument, rehearing and redetermination of the said motion for summary judgment, and this appeal is taken from each and every part of said above memorandums, orders and judgment as well as against the whole of each thereof.

Dated: New York, December 26th, 1974,

Yours, etc.

Harold I. Gold
HAROLD I. GOLD,
Attorney for William McQuillan,
Plaintiff-Appellant,
No. 10 East 198th St.
Bronx, N.Y. 10468,
212-367-4441

TO:
Hon. Raymond F. Burghardt,
Clerk of the United States District Court
Southern District of New York,

Kirlin, Campbell & Keating, Esqs.,
Attorneys for "Italia" Societa Per Azione Di Navigazione,
Defendant-Appellee,
No. 120 Broadway,
New York, N.Y. 10005,
212-732-5520.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

PLAINTIFF-APPELLANT'S AMENDED NOTICE OF APPEAL.

By *M. J. [Signature]*
Deputy Clerk

(APP. P. 52)